

Current State Assessment Cuyahoga County Prosecutor's Office Prosecutor Timothy J. McGinty



Current State Assessment Team

03 December 2012

**CURRENT STATE ASSESSMENT TEAM
COUNTY OF CUYAHOGA
PROSECUTOR TIMOTHY J. MCGINTY**

30 November 2012

**Hon. Timothy J. McGinty, Prosecutor
County of Cuyahoga
1200 Ontario Avenue
Cleveland, OH 44113**

Dear Prosecutor McGinty:

On behalf of the Current State Assessment (CSA) Team, by this letter we transmit to you our CSA of the Cuyahoga County Prosecutor's Office (CCPO) – including a series of recommendations for improving the operational support and service delivery of your office. We have also included a number of exhibits that support our recommendations.

On 01 October 2012, you became the Interim Cuyahoga County Prosecutor. On the same day, we accepted your request to assemble and support a team of volunteer professionals to conduct this CSA. In addition to the two of us, the CSA Team is comprised of the following individuals: Tuan Bustamante, Brendan Doyle, Tom Hayes, Edward Herman, Steve Letsky, Jim Rokakis, Michelle Sheehan, Lorri Stewart and Jose Torres.

Our charge was to review CCPO's current systems, policies, procedures, structures and practices – and to make recommendations to improve the efficiency and effectiveness of operational support and service delivery.

The CSA Team was divided into three parts – the first to analyze CCPO's operational support system; the second to review the quality of legal services provided by the office; and, the third to examine CCPO's foreclosure activities.

The CSA Team included experienced and recognized professionals, as well as subject matter experts – all of whom volunteered their time and expertise to this effort. We interviewed more than 230 support staff, Assistant Prosecutors, practicing attorneys and outside parties. We reviewed the many CCPO policies, procedures, practices, systems and structures. We used our experience in, and commitment to, local government – and offer our best assessments and recommendations.

Thru this transmittal, we complete our work and effectively disband as a group. We recognize that you are under no obligation to accept any of our recommendations.

However, we hope that you acknowledge the challenges before you – as well as the need to consider substantive changes to CCPO's current operations and service delivery. We think that these changes should be consistent with our recommendations and the 17-point reform plan you developed during your campaign.

We suggest that the Transition Team first identify the core mission, vision and values that will guide CCPO going forward. Next, it would develop a Strategic Plan – including your set of goals, objectives and priorities. The Plan would also include a specific set of operational and programmatic performance metrics to be used to measure your progress.

You may also consider seeking and incorporating public comment. Thereafter, it would be the responsibility of you and your new executive leadership team to implement the Strategic Plan – and report the results to the public at least annually.

A public trust has been passed to you. Given the recent record of public corruption in Cuyahoga County, our fellow citizens became weary and disillusioned with County government. Reform was implemented, recent developments are encouraging – and you have a terrific opportunity to sustain the momentum.

Now is the time is now to reinforce the restoration of this public trust, honor the public faith, elevate the value of public service – and embrace the requisite responsibilities.

We are confident in your ability, integrity and desire to reinvigorate the CCPO, and we wish you good fortune.

Thank you for entrusting us with this task, and for the opportunity to serve our community.

Sincerely,

John F. McCaffrey

John M. Zayac

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METHODOLOGY

Immediately after taking office on 01 October 2012, Interim Cuyahoga County Prosecutor Timothy J. McGinty requested that a team of volunteer professionals be assembled to conduct an assessment of the current state of the Cuyahoga County Prosecutor's Office (CCPO).

This Current State Assessment (CSA) was conducted to review all of CCPO's current systems, policies, procedures, structures and practices – and to make recommendations to improve the operational efficiency and effectiveness, as well as service delivery.

The CSA Team was divided into three sectors – the first to analyze CCPO's operational support system; the second to review the quality of legal services provided by the office; and, the third to examine CCPO's foreclosure activities. A work breakdown structure was developed to engage this scope of activities, and is presented in Figure 1.

The CSA Team included recognized, experienced professionals and subject matter experts who volunteered their time to this effort. We reviewed all CCPO policies, procedures, practices, systems and structures – studying documents, interviewing CCPO staff, and consulting with outside parties with direct knowledge and related experience.

The work started with the development of a questionnaire to structure our interviews (see Exhibit 1). Next, we conducted 230 interviews with current CCPO employees, as follows:

- 103 interviews with CCPO support staff in the Operations sector
- 119 interviews with attorneys in the Prosecution Services sector; and,
- Eight (8) interviews with supervisors and attorneys in the Foreclosure sector (see Exhibits 2 and 3).

Out of these interviews emerged themes, issues and concern – large and small. The interviewers memorialized their observations in a series of assessments and recommendations on various topics, and then submitted them for compilation, formatting and editing.

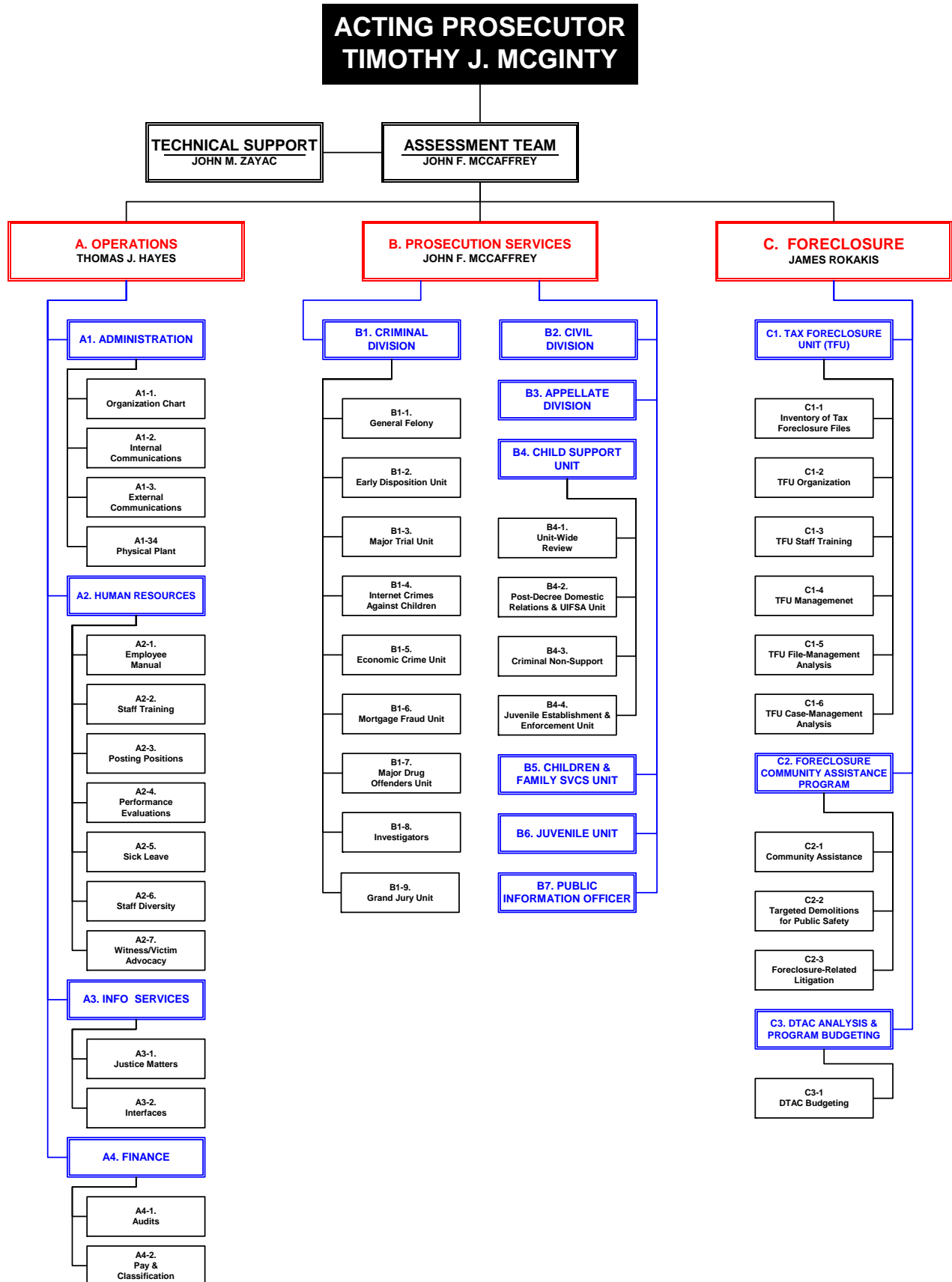
It is that compilation that is presented herein.

FIGURE 1

PROSECUTOR TIMOTHY J. MCGINTY

CURRENT STATE ASSESSMENT:

WORK BREAKDOWN STRUCTURE



A. OPERATIONS

INTRODUCTION

This section examines CCPO operations by reviewing the following categories of activities:

- Administration;
- Human resources;
- Information services; and
- Finance.

A1. ADMINISTRATION

This subsection will assess the administration of CCPO, and make recommendations in the following areas:

- Organization chart;
- External communications;
- Internal communications; and
- Physical plant.

A1-1. Organization Chart

Assessment 1: Any successful organizational structure has several features – it makes sense to the outside observer, is as flat as possible, clearly defines responsibilities, and empowers and delegates decision-making to the lowest level possible.

The current structure of the CCPO fails every test (see Exhibit 4).

During staff interviews, it was reported that the structure is confusing. They note that much time is wasted to secure answers to even the simplest questions – because one must first climb the organization hierarchy to find someone willing to make a decision. The current structure even subdivides one pay grade into four subsections in an attempt to create a myriad of levels for Assistant Prosecuting Attorneys (APAs).

While it is not our intention to recommend all of the levels of an organizational structure for CCPO, there are a few key leadership positions that should be established to define the rest of the organizational structure.

Recommendation 1: As a starting point for a new organization we recommend the following leadership positions:

- **Chief of Staff:** to serve as the Chief Operating Officer responsible for all daily operations of CCPO – including, but not limited to, all policy and planning, human resources, information technology, accounting, budgeting, media/community relations, procurement, internships and recruitment. Specifically, the Chief of Staff should also be in charge of the following:
 - * Develop and enforce all of the policies and procedures for the entire agency;
 - * Serve as a signator on all discretionary accounts (see Section A4-2); and
 - * Oversee all activities assigned to the Director of Policy and Planning.
- **Director of Policy and Planning:** under the direction of the Chief of Staff, the Director should be responsible for all research, policy issues, criminal justice reform, grants administration, web site and performance reporting. Specifically, the Director should also be in charge of the following:
 - * Such large public-policy projects as implementing central booking;
 - * Work on legislative initiatives at the federal, state and local levels to advance the County Prosecutor’s reform agenda; and
 - * Search Notices of Funding Availability (NOFAs), identify opportunities consistent with the mission of the CCPO and engage a professional grant-writer to prepare a proposal.
- **Chief Assistant County Prosecutor (Criminal Division):** responsible for the day-to-day management of the criminal caseload and the investigation staff; and, be a signatory on all discretionary accounts for all expenditures related to the Criminal Division. The Chief Assistant County Prosecutor (Criminal Division) should also be designated as First Assistant to comply with the Ohio Revised Code.
- **Chief Assistant County Prosecutor (Civil Division):** responsible for the day-to-day management of the civil caseload and providing legal opinions to agencies; and oversee the Foreclosure Department. This person should also serve as the Chief Ethics Officer for CCPO – responsible for providing ethics training for all employees, and ruling on matters of possible conflict of interest.

Recommendation 2: In order to reform CCPO, the Chief of Staff, the Chief of the Criminal Division and the Chief of the Civil Division should have the freedom to design the optimal organizational structure to meet their mission.

They should have the authority to select staff from among existing CCPO staff and other external resources needed to operate a successful agency; this authority should include promoting, demoting and terminating staff as needed.

A1-2. External Communications

Assessment 1: Here, we assessed CCPO's ability to track communications from outside constituencies – but any communications resulting from a legal matter was considered outside this review since it is part of CCPO case-tracking system. For the purpose of this assessment, we focused on routine constituent communication and public records requests.

Based on our interviews with relevant staff, the office monitors the time to respond to public records requests but does not have a standard for an expected time to respond to the requests. Routine communications are neither tracked nor monitored. Unfortunately, failure to track communications can result in correspondence that is lost or not responded to in a timely manner.

Recommendation 1: CCPO should procure and/or develop a system to log all correspondence and public records requests and track their time to respond against a recognized office standard. Letters should be logged by sender, subject, date received, staff assigned, response, case number (if appropriate), and a document reference number to ensure identification in an electronic storage system. Tracking correspondence and public records requests in an automated manner will allow staff to determine trends by city, subject and sender.

Recommendation 2: CCPO should promulgate policies within the office – outlining the expectations for timely response to all communications that are not part of a legal matter pending in the office. A suggested schedule follows:

- Written correspondence – written response within ten (10) business days;
- Email correspondence – immediate acknowledgement of receipt and emailed response in five (5) business days;
- Telephone communication – call returned within 24 hours;
- Media request – communication acknowledged within one (1) hour and response the same day; and
- FOIA requests – immediate acknowledgement of receipt with an estimated time to respond to request.

A1-3. Internal Communications

Assessment 1: During interviews with 103 CCPO support staff, internal communications were a reoccurring concern. Support staff cited the following issues to illustrate this concern:

- Poor communication – things constantly changing in the office without explanation;
- Support staff does not know what is going on in the office;
- Sudden staff changes and/or transfers are made without explanation; and

- Confusion over constant policy and/or procedure changes without staff input or explanation.

Failure to keep critical staff informed of changes can lead to a loss of morale, confusion over policies and procedure, and a general breakdown of the efficiency of the organization.

Effective public agencies routinely communicate with staff, seek staff input and always explain why a change is being made. Failure to inform staff of the reason for change will lead to speculation – which is often wrong, and eventually projects such speculation onto the administration.

Recommendation 1: CCPO should routinely use all-staff emails and meetings to update everyone in the organization about changes before they happen. Informing staff of changes in the office will minimize office gossip and will give everyone the reason why a change is made.

Recommendation 2: Prior to promulgating a policy or procedural change, CCPO should publish it thru all-staff correspondence and seek staff input. Vetting a change thru the staff can put a fine point on the policy issue. It can help CCPO avoid publishing a rule/policy/procedure – and then having to subsequently rescind it when unintended consequences of the change emerge.

Recommendation 3: CCPO should create an electronic suggestion box so that staff can pass helpful suggestions on directly to the County Prosecutor. This can be accomplished by creating and publishing a private email address that staff can use to identify problem areas – and make recommendations for addressing the problem. Access to this email account should be restricted to the County Prosecutor alone as a way to keep his hand on the pulse of the organization.

A1-4. Physical Plant

Assessment 1: General observation of the physical space in the CCPO 8th and 9th floor office space found it in deplorable condition – and this observation was echoed throughout the interviews with support staff. Examples follow:

- Both floors occupied by CCPO were cluttered with boxes and very dirty;
- The space is lacking even the most routine maintenance;
- The office space is crowded due to the growth in staff since the original design;
- Staff is forced to use hallways to house clerical support staff – and since the spaces were never designed for such use, staff is subject to extreme heat and cold, depending on the weather; and
- Equipment being used – specifically copiers – does not have the capacity to meet the needs of the office and is frequently out of service.

Recommendation 1: The Justice Center Building has long suffered from a general lack of cleaning and maintenance services – despite the fact the office budgets are charged for space maintenance. The County Executive must either take on the responsibility of providing a clean and professional work space or permit offices to contract for their own cleaning and maintenance services.

Recommendation 2: CCPO should engage the services of a team – including a contractor, architect, and space planner – to reconfigure the existing office space in a way that will allow staff to move out of hallways and eliminate all the clutter and storage issues.

Part of the challenge can be met by deciding if every unit of CCPO should be located on the 8th or 9th floor of the Justice Center to do their work. For example, can the Foreclosure Unit and the Mortgage Fraud unit be located in a building in the immediate area of the Justice Center, possibly co-located with the County Land Bank? Although staff expressed concern with not being in the same building as the Clerk's Office due to routine filing requirements, this issue can be addressed if the Common Pleas Court enables electronic filing.

Recommendation 3: CCPO and Central Services should monitor the performance of the copiers and other equipment. Staff, specifically the Foreclosure Unit, experience copier equipment failure that challenges their ability to perform their work.

Every contract for fast-copy service must contain a performance clause that penalizes a vendor for excessive equipment down time. If a piece of equipment fails to meet an acceptable standard of performance, the piece of equipment must be removed and replaced. If the equipment continues to fail, the vendor should be penalized up to and including termination of the existing contract and loss of future contracts with the County.

A2. HUMAN RESOURCES

This subsection will assess the human resources of CCPO, and make recommendations in the following areas:

- Employee manual;
- Staff training;
- Posting positions;
- Performance evaluations;
- Sick-leave use; and
- Staff diversity.

A2-1. Employee Manual

Assessment 1: The need to upgrade the CCPO employee manual was underscored when we were informed during our interviews that CCPO uses its own manual – unless it is silent on a matter, upon which it then defaults to the County Executive’s personnel manual (see Exhibit 5).

According to CCPO’s human resources director, around August 2012, the previous County Prosecutor decided that CCPO would refer to the County Executive’s personnel manual in the event that CCPO employees appeal adverse actions to the County Human Resources Commission.

Unfortunately, there are three major problems with the decision by the former County Prosecutor to defer to the County Executive’s personnel manual:

- First, the CCPO personnel manual does not state that employees should refer to the County Executive’s manual;
- Second, there are conflicts between the two documents on matters of policy and procedure; and
- Third, it is unclear under the current charter if the County Prosecutor is covered by the document or if, as a separate elected official, he is governed by Ohio law and the rules of the SPBR.

The inherent weaknesses of the existing CCPO personnel manual provide the new County Prosecutor with an ideal opportunity to literally “rewrite the book” on how the agency will deal with its employees to promote an environment of fairness that so many employees currently find lacking.

Recommendation 1: Replace the existing CCPO personnel manual with a new one based on the existing manual used by the County Executive. A comparison of the two documents found the County Executive’s manual to be a superior document.

CCPO will need to synchronize its existing practices to reflect the new manual and conduct open sessions to brief staff of the new manual. CCPO will also need to give each employee a copy of the document and have each employee acknowledge in writing that the document was received and read.

The following are suggested modifications (NOTE: “CC” refers to sections of the Cuyahoga County Personnel Manual while CCPO refers to sections of the CCPO Personnel Manual):

- **CC Section 1.07 vs. CCPO Section 1.16: Release of Public Information** – CCPO provides much more information specific to CCPO. Therefore, this information should be retained – if not in the personnel handbook, in relevant policies and procedures handbook.

- **CC 1.08** – does not require a specific sign-off by employees acknowledging receipt of the manual. Use CCPO’s existing “Receipt of Employment Policy Manual.”
- **CC 3.01: Ethics** – CC’s policy is comprehensive, but it may be valuable to retain some of the specific examples from CCPO Section 1.02 as they pertain to issues specific to CCPO.
- **CC 4.07 vs. CCPO Section 3.02** – CC is the better policy; however, the CCPO manual contains the following language that should be retained:
“If the employee is not satisfied with the determination, he or she has the right to file a complaint with the Equal Employment Opportunity Commission (EEOC) and/or the Ohio Civil Rights Commission (OCRC).”
- **CC Section 5.06** – does not specify the amount of money employees will be charged for a subsequent replacement ID badge. CCPO Section 2.04 states the amount would be \$20. We recommend that no amount be included, but we wanted to point out this specific discrepancy – given its potential immediate impact on current employees.
- **CC 5.07** – requires two (2) performance evaluations during a probationary period (one (1) at midpoint and one (1) at the end). CCPO 3.07 only requires one (1) at the end, which is standard practice. We recommend one (1) evaluation to be completed just prior to the end of the probationary period – with supervisors being advised that any performance issue be discussed and documented with the probationary employee as soon as the issue arises, and then again on the performance review.
- **CC 5.16 and CCPO 6.01** – both require only a two-week notice to leave any position. We recommend requiring attorneys and professional-level staff to give four (4) weeks notice to leave in good standing. Even if there are no repercussions for not leaving in good standing, it would be a good policy to maintain.
- **CC 8.09** – failure to return from a qualifying FMLA leave. The policy reads that “Failure to return to work upon the expiration of the approved leave, without reasonable explanation, may subject the employee to discipline, up to and including removal [emphasis added].” Standard practice is that failure to return without a reasonable explanation will constitute job abandonment and be classified as voluntary termination.
- **CC 9.02 and CCPO 5.03** – note that the vacation rates and annual amounts differ based on years of service. We have no opinion as to which one is a better model; however, we wanted to point out the discrepancy.
- **CC 9.06 and CCPO 5.06** – the bereavement-leave policies differ, in that the current CCPO policy allows for three (3) days of bereavement leave that is not charged to an employee’s sick or vacation balance. On the other hand, CC allows for five (5) days – but they must come out of the employee’s sick or other eligible paid leave balance; or, request the time unpaid. Neither is significantly better than the other; personal preference of the County Prosecutor could dictate here.

- **CC 9.08 and CCPO 5.08** – donation of time policies differ substantially; again, though, neither is significantly preferable to the other. Personal preference of the County Prosecutor could dictate here.
- **CC 13.02 and CCPO 1.05: Dress Code** – we recommend retaining the CCPO dress code policy, as it specifically addresses the needs of CCPO.
- **CC 13.08 and CCPO 4.01: Conduct and Discipline** – we recommend retaining the language from CCPO 4.01 that explicitly reminds employees that most employees of CCPO are at-will, unclassified employees and therefore are not entitled to rely upon the provisions relating to progressive discipline. It also reminds them that they can be removed with or without cause.
- **Attendance Policies** – these also differ. However, the CC manual provides a clearer avenue to discipline regarding attendance issues. Note, though, that if CCPO moves over to this process, supervisors will need to be trained on the new policy.
- **Electronic Manual** – we recommend providing employees with access to an electronic manual with hyperlinks that allow easy navigation between related policies

Recommendation 2: In order to be effective as a member of CCPO's staff, employees must be above suspicion of any potential conflict of interest in matters before CCPO. Therefore, it is essential for the professional staff to disclose all of their financial interests in a manner consistent with the ethics requirements of the County Prosecutor himself. To that end the new CCPO personnel manual should include the following:

- No CCPO employee shall accept anything of value from anyone doing business with the office – or having an interest in any matter pending with the Office; and
- All CCPO professional staff shall file with the office a complete ethics form on or before April 15 of the following year.

Recommendation 3: CCPO employees must be able to conduct their duties free of any pressure to contribute to the political or charitable interests of their co-workers and/or superiors. The only charitable solicitation that should be permitted in the office should be thru the County Combined Charitable Campaign. Therefore, the following provisions should be included in the new CCPO personnel manual:

- There will be no charitable or political solicitation during business hours or in CCPO at any time; and
- CCPO employees shall be prohibited from contributing to any campaign committee created to advance the political or policy interests of the County Prosecutor.

Recommendation 4: This should be a new day in Cuyahoga County and CCPO. After several years of public corruption trials of Democratic Party officials, maintaining public confidence in the office calls for new rules and greater expectations.

As a result, CCPO should make an extra effort to avoid any appearance of a conflict of interest – and should take whatever steps necessary to do so. CCPO employees should be encouraged to be active in their communities, charities and other civic organizations, but CCPO cannot be perceived to be a politically-motivated operation and maintain credibility. To this end we recommend that the new CCPO personnel manual include the following language:

- In order to maintain public confidence in the integrity and non-partisan nature of the decisions of CCPO, and to avoid any appearance of a conflict of interest, any employee of the County Prosecutor's office who files for any partisan public office shall take a leave of absence and, if elected, must choose which position they wish to hold; and
- In order to keep the decisions of CCPO free from political influence, no employee of CCPO should be permitted to serve as a Ward/City Leader or as an officer for any State, County or City political party or organization.

Recommendation 5: CCPO should resolve, once and for all, if the agency is covered by the County HRC or the SPBR. This question can be resolved either by requesting an opinion from the Ohio Attorney General – or by petitioning the Charter Review Commission to add clarifying language to the Charter for consideration by the voters of the County.

A2-2. Staff Training

Assessment 1: CCPO has no coherent or comprehensive orientation or training program in policies and procedures. New employees spend a few minutes to fill out their employment forms, receive a copy of the personnel manual, and then they receive their assignment. The level of training they receive is dependent on the staff person to whom they are fortunate or unfortunate enough to be assigned.

During 103 support staff interviews, training issues emerged as a constant concern. Their issues included the following:

- Lack of cross training and staff rotation;
- Lack of training and/or mentoring for APAs;
- No duty-related training for non- attorneys;
- No orientation for new employees;
- Lack of duty-related training forces staff to pay for required training out of pocket;
- Training videos are badly outdated;
- No sensitivity training;
- No training and/or reference manuals containing FAQs for employees starting a new assignment; and
- No training for those dealing with children as victims and witnesses to crimes.

The lack of a comprehensive training program within CCPO affects performance, productivity and leaves staff to their own initiative to learn their new assignment. It is difficult for an agency to hold staff accountable for lack of performance when employees are never told what to do, how to do it, or where to go with questions.

Recommendation 1: CCPO should develop a comprehensive orientation program for all new employees – including a presentation about the criminal justice system and CCPO’s role in it. The orientation should clearly state the values of the organization and establish where an employee should go to seek answers for every possible situation – both personal and professional.

Recommendation 2: CCPO should pay for required, duty-related training for all staff – not just APAs. If staff is required to learn a new skill (e.g., new technology), CCPO should pay for and provide this training.

Recommendation 3: CCPO should develop a comprehensive training program for every position within the organization, a mentoring program for all new staff, and a set of reference manuals and FAQs covering the work of every unit within the office.

Recommendation 4: CCPO should consider creating a tuition-assistance program to help staff matriculate toward a related degree or certification. Assistance should be performance-based – with participation restricted to those scoring 3.5 or higher on their performance evaluation (see Subsection A2-4). Reimbursement should also be limited to courses where students achieve a grade a B or higher.

A2-3. Posting Positions

Assessment 1: According to the County Executive's Director for Human Resources, CCPO does not post openings for APA positions or support positions above entry level. CCPO does post entry-level support-staff positions on the County's website

However, CCPO does not take the additional step of sending them with the County Executive's Human Resources Department – thereby increasing awareness of openings and the number of qualified applicants. This was verified by Lisa Durkin, the County's Deputy Director for Human Resources – who stated that CCPO has never notified her office of any available positions.

During support-staff interviews, a major shortcoming raised was the lack of awareness of promotional or transfer opportunities within CCPO. The office does attempt to promote from within – which healthy organizations do to improve morale. However, its failure to actually make employees aware of opportunities has the opposite effect – giving the impression of favoritism and harming morale.

Recommendation 1: CCPO should immediately post all available positions on the CCPO and County websites – and notify the County Executive's Human Resources Department of any open positions to increase awareness of available positions.

Such outreach will help create a broader and more racially- and ethnically-diverse audience of qualified potential applicants. CCPO should also notify all staff of any available openings so that staff can pursue promotional opportunities or lateral transfers to learn a new skill or achieve a change of scenery.

A2-4. Performance Evaluations

Assessment 1: The entire program of performance evaluations at the CCPO was found to be a failure – based on interviews with the CCPO human resources director, supervisors, support staff and a review of the existing evaluation instruments.

The current system is arbitrary and capricious – and does not accurately assess the performance of employees. Supervisors are instructed that no employee is to be given a score of 5 on a 5-point evaluation scale. If a supervisor awarded a score that was deemed too high, they were instructed to lower the score.

The reason for this decision varies depending on with whom you speak. Either the previous administration believed that awarding a 5 indicated perfection and no one is perfect – or awarding a 5 would give employees a reason to request a raise in salary. Regardless of the reason, the failure to award a 5 on a 5 point scale casts suspicion on the entire process.

Far worse is the failure to recognize outstanding employees. Suppressing compensation demands is illogical – and serves to diminish the motivation of the very people needed to be a successful agency. In addition to the policy of dampening evaluation scores, many employees reported that they were either never evaluated – or never saw or signed their evaluations.

The CSA team also asked to review the evaluation instruments and found a patchwork of 10 separate evaluation instruments (see Exhibit 6) – one for each of the following:

- Administration;
- Second Chair;
- Assistant County Prosecutor (APA);
- Appeals Unit APA;
- Children & Family Services Unit APA;
- Domestic Relations Child Support Enforcement/UIFAS Division APA;
- Tax Foreclosure Unit APA;
- Grand Jury Unit APA;
- Information Services; and
- Support Staff.

This method of evaluating employees will result in inconsistent evaluations for individuals in the same job classification – rendering it impossible to install any merit-based compensation system using these evaluation instruments. Another irony is that the instructions outline the requirement for a score of 1 through 5 – even though supervisors were instructed never to give a 5.

Recommendation 1: CCPO should immediately discard the existing evaluation system and replace it with an evaluation system that recognizes three groups – clerical support, technical staff and APAs, and supervisors/management – and use an instrument that is professionally developed and tested.

These instruments are readily available and will be significantly easier to implement and understand than the existing system. The County Executive uses just two evaluations – one for supervisors/managers/directors and one for everyone else. We recommend a third instrument be developed by CCPO that is a hybrid of the other two for technical staff and APAs.

Once the evaluation instrument is created and staff is trained in its use, CCPO should immediately conduct an evaluation of every employee by requiring every employee to first do a self-evaluation, an upward evaluation of their supervisor, and a downward evaluation of any staff assigned to them.

This first evaluation instrument should be scored by an independent third party, and the following steps enacted:

- Those employees achieving a score of 4 or above should move up two steps in their pay grade;
- Those achieving 3 to 4 should move up one step in their pay grade;
- Those below 3 should move down one step in their pay grade and
 - * Be counseled on goals for increasing their performance over the next six (6) months,
 - * Be reevaluated after six (6) months and,
 - * Thereafter, those continuing to score less than a 2 should be removed from their position; and
 - * Those scoring between 2 and 3 should be advised that – if their performance is not higher than 3 on their next evaluation – they will be removed.

Recommendation 2: CCPO should immediately eliminate the nonsensical practice of failing to recognize outstanding employees by refusing to award a 5 on an evaluation. This is tantamount to telling a school child to do their best – but regardless they will never get an A.

In addition, once a logical and comprehensible pay classification system is implemented, all future compensation increases (see Subsection A4-2) should be merit-based and tied to the employee's performance evaluation.

A2-5. Sick-Leave Use

Assessment 1: CCPO employees are granted sick leave to care for themselves or family members in the event of an illness or injury. When used appropriately, consistently and within policy, it provides employees with an opportunity to remain an employee in good standing while addressing an injury or illness.

Employees are also permitted to accrue sick-leave balances – to be used in the event of catastrophic illness so that event does not cause them to suffer undue financial hardship. However, under no circumstances should sick leave be used as a secondary pool of vacation or personal leave time. Failure to monitor sick leave abuse can lead to unplanned absences, a loss of productivity and an undue benefit for employees of CCPO.

Currently, CCPO has 90 employees with less than two (2) weeks of accumulated sick leave – which amounts to 80 hours (see Exhibit 7). When new employees, part-time employees, employees with recent illnesses and those employees using sick leave under the Family Medical Leave Act are subtracted from this amount, there are still 29 employees carrying less than two (2) weeks accumulated sick leave. This indicates that there are potential instances of abuse that are not being addressed.

Recommendation 1: CCPO should institute a performance-monitoring system to identify any employee carrying less than 80 hours sick leave for six (6) consecutive pay

periods. Any employee so identified should be placed on probation, and be required to provide a medical excuse for any medical leave requested.

A2-6. Staff Diversity

Assessment 1: According to the Cuyahoga County Office of Budget Management (see Exhibit 8), the 2010 population of Cuyahoga County was 1,280,122 – with the following demographic profile:

- 63.6 % Caucasian;
- 29.7 % African-American;
- 4.8% Hispanic;
- 2.6% Asian;
- 0.2% Native American; and,
- 2.1% Multi Racial.

On the other hand, according to information provided by the CCPO staff, the profile of its current 336 employees does not reflect that of the County's at large, as follows:

- 78.3% Caucasian (263 employees);
- 18.5% African-American (61); and
- 1.5% Hispanic (5).

To compound matters, among the 207 staff carrying the designation of Assistant County Prosecutor (APA), the following profile emerges

- 83.6% Caucasian (173);
- 12.6% African-American (26); and
- 1.4% Hispanic (3).

Of more concern is the fact that there are only two (2) African-American males serving as APAs.

Of the 336 employees reported by CCPO staff, 50.8% (171) are female. This statistic is somewhat deceptive because women represent only 42.5% of the APAs.

The lack of minority representation in the overall staff of the CCPO is inconsistent with the composition of the population of Cuyahoga County. Upon review of the racial composition among APAs, the results are even more telling. The County is 63.6% Caucasian – but CCPO's APA staff is 83.6% Caucasian.

To compound matters, six (6) African American have announced that they will be leaving the CCPO before the end of the year to take advantage of a career advancing opportunity.

This disparity is not in the best interests of the community – and could be interpreted as an inability or unwillingness to relate to a very significant segment of the population. The issue is rendered more acute because an overwhelming number of the victims and defendants in the criminal justice system are minority.

One could argue that fewer minority candidates apply for APA positions. Unfortunately, this is true because – according to the CCPO human resources director – CCPO does not post openings for APA positions or promotional positions for support staff.

CCPO does post entry-level support staff positions on the County’s website, but does not take the additional step of sending them to the County Executive’s Human Resources Department. Again, this was verified by the Executive’s Deputy Director for Human Resources Lisa Durkin – who stated that CCPO never sends notice of any available positions to the Executive’s Human Resources Department.

Creating a diverse work force in CCPO, one that reflects the community, requires both desire and commitment. Unfortunately, the current CCPO lacks both.

Recommendation 1: CCPO should immediately post all available positions on the CCPO website, the Cuyahoga County website, and notify the County Executive’s Human Resources Department of any available positions – thereby increasing awareness of available positions, and reaching a broader, and more racially and ethnically diverse audience.

Recommendation 2: CCPO should increase its efforts to recruit members of the minority community to serve as APAs. In addition to an awareness campaign with area law schools, CCPO should also consider creating a minority internship program for well-qualified second-year law students – thereby providing real-life experience that could translate into employment with CCPO upon graduation.

A2-7. Witness/Victim Advocacy

Assessment 1: CCPO currently has only one (1) person responsible for coordinating all witness/victim advocacy. During a recent single week, according to information provided by the CCPO Victim/Witness Coordinator, she was involved with the following:

- Three (3) homicide trials;
- Two (2) rape cases that were resolved with pleas;
- One (1) vehicular homicide trial at Juvenile Court;
- Two (2) sentences for sex offenders; and
- Multiple victim/witness meetings taking place concurrently where the Victim/Witness Coordinator was actively involved, due to the lack of outside advocacy.

In addition, there were multiple domestic-violence cases that did not have an advocate connected to the case.

Although placing the witness/victim advocacy position within the Major Trial Unit (MTU) has strengthened cases by providing additional support to victims and witnesses, the lack of staffing stretches the one (1) person assigned to this responsibility well beyond her capacity.

Recommendation 1: CCPO should immediately realign and staff the Victim/Witness services function in the following manner:

- The Victim Witness Unit (VWU) should be supervised by the Victim/Witness Coordinator, who would report directly to CCPO's Chief of the Criminal Division; and
- The Victim Notification Unit (VNU) should also be supervised by the Victim/Witness Coordinator – allowing for cross-training between the victim notification unit and the advocates. For example, if a victim presents at the front desk and no advocate is available, it would be the responsibility of someone from the VNU to briefly address the victim/witness and forward pertinent information to the appropriate advocate or APA.

Recommendation 2: The advocate assigned to the Juvenile Court should be responsible for contacting victims on all sexual assault, homicide, attempted murder, assault and domestic-violence cases upon the delinquent being charged formally. The Juvenile Advocate should work in concert with the advocate housed in the office from the Cleveland Rape Crisis Center (CRCC) on all sexual assault cases, and will take the lead on cases where CRCC is not providing advocacy.

Recommendation 3: The Victim/Witness Coordinator should remain the lead advocate for MTU, and assign MTU cases to the general felony advocates as needed. The general felony advocates would split the five (5) regions and be responsible for contacting and assisting any case at the request of an APA.

The general felony advocates should work in concert with the CRCC advocate housed in CCPO on sexual-assault cases and take the lead on cases where CRCC is not providing advocacy; the same would apply with working with Witness/Victim Service Center (WVSC) – which is a separate County agency outside of CCPO. The general felony advocates would be present at the Grand Jury whenever a victim of domestic violence or sexual assault is subpoenaed to testify.

Recommendation 4: CCPO's Victim/Witness Unit should make contact with the victims of domestic violence as soon as the case is forwarded to the office. These cases are often the most difficult to prosecute due to the "victimology" of domestic violence and the reluctance of the victim to participate in the process of the criminal justice system.

Early interaction with the victim would make a “stronger” victim – thus creating a stronger case. Currently, the Domestic Violence Center concentrates on suburban domestic-violence cases, while WVSC has a strong focus on Cleveland misdemeanor cases. This formula creates an underserved population of domestic violence victims whose cases are at the felony level.

Recommendation 5: The Victim/Witness Coordinator should be given a parking pass immediately. She is required to travel frequently to meetings, where she represents the office and pays twice for parking. Also, there are times when she stays late in the evening assisting with trial preparation – and requiring this person to walk alone in a remote lot is a safety issue.

In general, parking passes assigned to CCPO, especially those under the Justice Center should be assigned in a manner that is in CCPO’s best interest – and not to individual employees as a perk.

A3. INFORMATION SERVICES

This subsection will assess the information services of CCPO, and make recommendations in the following areas:

- Justice Matters; and
- Interfaces.

A3-1. Justice Matters

Assessment 1: On 11 April 2005, the Cuyahoga County Board of County Commissioners (CCBOCC) entered into an agreement (CE0500494-01) with CGI-AMS to assist and advise CCPO, “...in the design, development, programming and implementation of a new Custom Prosecutor’s Case Management System with Integrated Document Imaging (“System”).” Broma Information Technology (Broma) served as the SBE on the project and CCPO’s current vendor, Pointe Blank Solutions (PBS) was a subcontractor on the project.

On 11 December 2006, CGI-AMS and Broma entered into an Assignment and Assumption of Contract, pursuant to which Broma assumed all rights and responsibilities under the 11 April 2005 agreement with the CCBOCC. Thirty days later, on 10 January 2007, Broma and PBS executed a Subcontractor Agreement. Included was an Assignment and Assumption of Rights by PBS – and a grant of rights by Broma – pursuant to which PBS completed the Detailed Design and Implementation Phase of the contract, and delivered to the CCPO a custom case management system known as “Justice Matters.”

The original contract was so poorly written that it is difficult to understand what was to be delivered by the vendor at the end of the contract. Unfortunately, the Request for Proposal – normally included in the contract to provide a detailed description of the system desired by CCPO – was not incorporated into the contract.

On the other hand, fortunately for CCPO – as the original vendor and one of his subcontractors were leaving the project – PBS stepped into the breach and delivered a case-management system that to date, although still incomplete, has been acceptable to CCPO.

On 18 July 2009, CCBOCC entered into an agreement with PBS for the following:

- The continued development and modification of the System; and
- The maintenance, monitoring, support of the System and training related to the System.

The period of performance under the agreement was 01 March 2009 thru 28 February 2013 – for an annual cost of \$600,000, and a total cost of \$2,400,000. The agreement further divided the annual cost into a not-to-exceed amount of \$252,000 per year – billed hourly for continued development and modification to the System; and, \$348,000 per year for maintenance, monitoring, support and training.

Despite all of the confusion about the original contract, one thing is clear – the County spent \$2,990,000 on the original contract and will spend approximately \$2,400,000 on maintenance and ongoing system development through February of 2013.

However, nearly eight (8) years later, CCPO still does not have a comprehensive system to address its needs. A summary of the status of major functions in CCPO, commonly referred to as “Legal Matters” in the Justice Matters System, are as follows:

<u>UNIT</u>	<u>START DATE</u>	<u>END DATE</u>	<u>% COMPLETE</u>
Civil	11/01/11	02/15/13	10% Complete
Appeals	12/01/11	03/01/13	5% Complete
Children & Family	08/24/12	11/09/12	95% Complete
Adult Diversion	10/01/12	11/30/12	75% Complete
CSEA Enforcement	02/15/13	03/29/13	Not Started
CSEA Establishment	03/15/13	04/26/13	Not Started
Juv. Intake/Diversion	05/13/12	06/24/13	On hold

Despite the efforts of the vendor, staff report that use of the system was not always stressed as a priority – thus slowing development. CCPO also relied too heavily on the efforts of the vendor in lieu of building its internal capacity to roll out and support the system throughout the agency.

In response to a question, PBS reported that – during the current maintenance agreement – PBS was budgeted to provide 8,064 hours of ongoing development and

support. However, in fact, PBS worked 20,127 hours in excess of their contractual obligation without charge – which translates into \$1,507,931.25 in fees not charged to CCPO for this contract period.

While it is not possible to independently verify this claim or to document the work product provided, if even a fraction of this claim is accurate, it highlights a serious flaw in the CCPO IT service and support staffing model. If CCPO assumes PBS or any other vendor is going to continue to provide the same level of support without charge, it is whistling past the proverbial graveyard.

Recommendation 1: CCPO must reconcile what was actually delivered under the original contract and the subsequent development agreement with PBS; clearly articulate the finished product at a steady state; and, create a plan to move the existing system toward completion.

Such a plan should detail exactly what development needs to be completed – and set a “look ahead” schedule to ensure that the system is complete and operational by the end of 2013. CCPO should also include a plan to support its future information-technology needs, determine which services it will provide in-house, and which services will be provided by external resources.

Recommendation 2: The new maintenance and support agreement should reflect the work necessary to complete the system in 2013 – and thereafter limit the scope to a maintenance agreement which includes all new releases of the software in other jurisdictions.

If CCPO wants to create a new development agreement with a vendor after 2013, it should be a separate agreement with a specific scope and deliverables at a firm fixed price. While it is our belief that PBS operated in good faith, the structure of the current maintenance/development contract provides little incentive for a vendor to actually complete the system – and may result in granting a sole-source contract for components that may be provided by other vendors or in-house staff.

Recommendation 3: CCPO must reconcile the conflicts concerning ownership of the system and ongoing licensing agreements between the language in the original agreement and the subsequent development/maintenance agreement. CCPO should understand which components of the system are owned by CCPO, and which components are licensed by CCPO.

Recommendation 4: CCPO should end the practice of using PBS as a *de facto* IT applications development unit in its IT department. As reported above, PBS provided over 20,000 hours of work on unknown projects in excess of its contractual obligation.

CCPO must control access to the vendor through one point of contact – preferably the CCPO IT director. The current agreement lists the First Assistant as the point of

contract – which makes little sense, and makes it difficult to reconcile the work actually performed with the billing hours charged in the invoice.

A3-2. Interfaces

Assessment 1: A number of criminal-justice-management systems operate in Cuyahoga County. For the purposes of this assessment, we discuss two of them – the Proware Court Management System (operated by the County’s Court/Clerk of Courts); and, Justice Matters developed by Pointe Blank Solutions (operated by CCPO)(see Exhibit 9).

The County acquired the Proware system approximately 13 years ago at a life-to-date cost of \$25,197,173 – including initial system development, integration and conversion efforts for the County, additional enhancements and ongoing maintenance.

CCPO’s Justice Matters system, was acquired 7 years ago at a life-to-date cost of approximately \$5,245,000 – including development, integration and ongoing maintenance. CCPO is still in the process of making the system available to all units in the CCPO.

The annual maintenance agreements for both systems are up for renewal in 2013. The County currently pays approximately \$1.9 million for annual maintenance, while CCPO currently pays \$600,000 for annual maintenance and ongoing system development.

The inclusion of life-to-date costs in this assessment is not to imply relative value or worth of each system; nor is it to claim that the two systems are capable of performing the same function. The Court’s system has been in place for over a decade and meets the needs of the Court, while the CCPO system is still being rolled out to the entire CCPO office.

We might add that a more fitting comparison would be between Justice Matters and the Prosecutor’s module in the Proware Court Management System. It is not known if this module was offered to CCPO 13 years ago. Either way, it is not our role to discuss what might have been – but rather what is and what can be done to derive the best value and functionality out of both systems.

Both the Proware and Justice Matters systems were funded with taxpayer dollars – as are the employees and vendors who maintain the information contained therein. As a result, both contain public records. Unfortunately, it is our understanding that there are no interfaces between Proware and Justice Matters.

Therefore, this assessment is focused on interfaces between the two systems – because the lack of interfaces results in a significant duplication of effort by the staffs of the Clerk of Courts’ office and CCPO. Both offices access the other’s system by

reviewing a paper record or via a web portal where they download the necessary information, print it and then data enter it into their system.

The CSA team is attempting to estimate the cost of duplicate efforts of data entry – as well as the inherent inefficiencies when CCPO and County systems are required to communicate via paper rather than electronically. A few examples of inefficiencies in data entry – where both systems are double-entering data include the following:

- Case Initiation;
- Charging;
- Subpoenas;
- Court scheduling;
- Person information;
- Case information;
- Bond information;
- Docket information (journal entries); and
- Probation information.

Since an interface does not exist between the County's Proware system and CCPO's Justice Matters system, the challenge is to determine if the reason is legal, financial, technological – or simply a management decision by one of the parties.

On 25 October and 31 October, we sent an email to Cuyahoga County Common Pleas Court leadership – asking for the reasons why an interface does not exist. On 21 October, they acknowledged receipt of the email and apologized for the delay – stating the first request was inadvertently routed to the Junk Mail folder by the County's security system.

On 08 November, Court leadership offered to meet and discuss our questions. We declined the same day – suggesting that it would be more productive and appropriate to discuss the prospects of a new interface between Proware and Justice Matters with CCPO staff and the new leadership team. We also renewed our request for a written response to our questions so the Court's position on interfaces would be clearly and accurately reflected in our report and not be the product of notes taken at a meeting.

During a follow-up telephone conversation on 21 November, the Court leadership offered to work with the new County Prosecutor and his leadership team to explore options to improve access to information between their two offices.

Hamilton County, Ohio – which includes the City of Cincinnati and its surrounding suburbs – also uses the Proware Court Management System. The County Prosecutor's office in Hamilton County uses Proware's Prosecutor module which – according to an email dated 02 November 2012 from Ms. Ginny Otto, Assistant Systems Administrator for the Hamilton County Prosecutor's office -- links directly into the Proware Court Management System. Ms. Otto also reported that the Hamilton County Prosecutor also has a separate in-house Prosecutor Case Tracking system programmed in Uniface –

developed and maintained by Proware and linked directly with the Proware Court Management System.

Obviously, if CCPO had previously decided to use the Proware Prosecutor's module, the issue of an interface would be moot. However, based on the fact that the Court and the Prosecutor's office in Hamilton County freely exchange information between their systems, it does not appear that the restriction is a legal issue.

On 01 November, we wrote an email inquiry to Mr. Tom Coury, owner of Pointe Blank Solutions, and he reported the following:

- Justice Matters and Proware do not operate together in any other Ohio county other than Cuyahoga County; and
- The only challenge in building an interface between Proware and Justice Matters from a systems perspective "...is the effort and technology required to interpret information from one system to another. It can be overcome with appropriate diligence."

Therefore, based on the representations from Mr. Coury, there does not appear to be any technological impediment to creating an interface between Proware and Justice Matters.

As mentioned previously, Cuyahoga County currently pays Proware and Pointe Blank Solutions \$1,963,988 and \$600,000 per year, respectively, to maintain the two systems. Since both contracts are up for renewal in 2013, it is difficult to imagine that the County's Department of Information Technology, which holds these contracts, cannot negotiate a required interface between these two systems into the next maintenance agreements for both systems. That would appear to address any financial barrier to creating an interface.

We are left with a management decision by the Court and CCPO to make a commitment to work together to create a more efficient system and save taxpayer resources. As previously mentioned, during a follow-up telephone conversation on 21 November, the Court leadership offered to work with the new County Prosecutor and his leadership team to explore options to improve access to information between their two offices.

Recommendation 1: Regardless of the past, the Court and CCPO should immediately authorize and require their respective vendors to create an interface between the Proware and Justice Matters system.

Recommendation 2: The Director of the County Executive's Department of Information Technology – who holds the maintenance agreements on both Proware and Justice Matters – should withhold his approval for any ongoing maintenance agreements with either party until there is language in both agreements requiring both vendors to create interfaces with any and all County-owned or -operated systems as needed.

A4. FINANCE

This subsection will assess some finance issues within CCPO, and make recommendations in the following areas:

- Audits;
- Discretionary accounts; and
- Pay and classification.

A4-1. Audits

Assessment 1: During any transition from one elected official to another, it is important that both parties be satisfied – thru an audit conducted by an impartial third party – that all accounts reconcile and all expenditures were appropriate. In this case, an audit will allow the outgoing party to be satisfied that the books are closed on his tenure, and provide a clean beginning for the incoming party.

In addition to the General Revenue and direct Federal grant funds like Internet Crimes Against Children (ICAC) entrusted to CCPO, the County Council has also appropriated Title IVD funds for activities related to Child Support Enforcement, Title IVE funds for activities related to Child Welfare, and DTAC funds for activities related to delinquent real estate tax collection.

Recommendation 1: CCPO should immediately contact the Auditor of State and engage his office to conduct an audit of all General Fund, Federal Fund, DTAC and Discretionary funds (see Subsection A4-2) entrusted to CCPO. The purpose of this audit should be to ensure that all accounts reconcile, all uses were appropriate, and that sufficient internal controls and accounting practices are in place going forward. The audit should include the following:

- All cash and cash equivalents in all funds;
- All cash and cash equivalents held in evidence by CCPO for all cases scheduled for trial;
- Review proper accounting procedures for all funds;
- Proper authorized signatures;
- Timely processing of invoices and receipts;
- Authorizations to enter data into the system;
- Payment authorizations;
- Review all payroll changes for proper documentation;
- Authorization to enter payroll data;
- Authorization to change payroll;
- Review adherence to fiscal policies;
- Review bank accounts for proper control of funds – including discretionary funds;

- Cash control of bank accounts;
- Account used for intended purpose;
- Review internal controls; and
- Compensatory leave accruals for exempt staff.

The above referenced audit should be completed as soon as possible using 01 October as the transition date.

Recommendation 2: CCPO should immediately determine the expiration date for all grant funds and either identify a source for future funding or prepare a close-out strategy that can be reviewed and approved by the Auditor of State.

A4-2. Discretionary Accounts

Assessment 1: Unlike most other County agencies, CCPO has under its control four (4) active and one (1) closed discretionary account. These accounts contain the following general ledger balances as of 01 October 2012:

- | | |
|-------------------------------|---------------------------------|
| • Federal Forfeiture Account | \$433,867.62 (see Exhibit 10) |
| • Furtherance of Justice Fund | \$30,187.78 (see Exhibit 11) |
| • Law Enforcement Trust Fund | \$531,836.25 (see Exhibit 12) |
| • Mandatory Drug Fine Fund | \$65,668.05 (see Exhibit 13) |
| • Pretrial Diversion Fund | Account Closed (see Exhibit 14) |

Unfortunately, some of the accounts have more than two (2) signators, some of the signators no longer are employed by CCPO, and none of the current signators will be part of CCPO's eventual executive staff.

Recommendation 1: Once CCPO executive staff has been identified, it should immediately remove all current signators and replace them with at least two (2) members of the executive staff.

Recommendation 2: The new executive staff should develop a policy for the ongoing management of these accounts.

Recommendation 3: As recommended in Section A4-1, CCPO should immediately contact the Auditor of State and engage that office to conduct an audit of all Discretionary Funds.

A4-3. Pay and Classification

Assessment 1: In 2012, CCPO staff received a total of \$361,587.76 in cost-of-living increases and \$300,802.31 in "other" increases (see Exhibit 15). While the cost-of-living

increases were relatively evenly distributed across the board, the “other” increase went to only 29 attorneys and six (6) support staff.

The “other” increases for attorneys average \$8,267.43 and range from a low of \$1,002.00 to a high of \$25,690.13. While some of the “other” increases appear to reflect changes in assignment or promotions, the largest increases do not involve a change in assignment or promotion.

The “other” increases for the support staff were granted to four (4) members of the IT staff, one (1) supervisor, and one (1) support staff person in the Mortgage Fraud Unit. The “other” increases for support staff average \$10,174.44 and range from a high of \$20,906.24 and a low of \$762.32.

CCPO is currently undergoing a Pay and Classification study commissioned by the Cuyahoga County Human Resources Commission. The study is being conducted by the Archer Company and is being led by Jim Battaglia, a highly-respected professional with many years of experience evaluating pay and classifications in Cuyahoga County.

The purpose of a Pay and Classification study is to ensure that every employee’s job title matches the duties they perform on a daily basis; and, that their position is designated appropriately as either classified or unclassified. The employee’s classification status will determine if they are governed by the rules and regulations of the State Board of Personnel Review or serve as an “at will” employee. Once an employee’s title is determined they are placed in a pay grade. The pay grades are determined based on comparable positions within County government and the local marketplace.

The previous two (2) Pay and Classification studies were conducted in 2001 and 2005, but were rejected by the previous administration. Failure to implement a pay-and-classification system in CCPO has led to a compensation system which could be successfully challenged – and fails to recognize each employee’s relative contribution to the work of the office. Nor does it recognize a rate of pay that reflects that contribution and the local market place. As a result, CCPO has instances where individual staff members, including APAs, are compensated at a level that is inconsistent with their relative value to the organization.

Recommendation 1: CCPO should accept the Pay and Classification study prepared by the Archer Company as submitted, and begin to move employees into the appropriate pay grades.

Recommendation 2: CCPO should establish a merit-based compensation system as stated in the recommendations regarding performance evaluations in Section A2-3 of this Report.

Recommendation 3: Once the new CCPO Chiefs of the Criminal and Civil Divisions are named, they should review the qualifications, experience and performance of each

member of their division to ensure that they are placed in the appropriate classification and pay grade.

Recommendation 4: CCPO should examine the appropriateness of the “other” salary increases awarded in 2012 to insure that were appropriate and reflected a promotion or change in duties. If not, the increase should be rolled back and aligned with the aforementioned Pay and Classification study.

B. PROSECUTION SERVICES

INTRODUCTION

This section examines CCPO's prosecution services operations by reviewing the following units of activities:

- Criminal Division;
- Civil Division (CIV);
- Appellate Division (APP);
- Child Support Enforcement Unit (CSEU);
- Children & Family Services Unit (CFSU)
- Juvenile Justice Unit (JJU); and
- Public Information Officer (PIO).

Throughout this section, several acronyms will be used – including Assistant Prosecuting Attorney (APA), In-Charge Attorney (IC), Continuing Legal Education (CLE) and Post-Release Control (PRC).

B1. CRIMINAL DIVISION

The Criminal Division is responsible for the investigation and prosecution of all felony criminal offenses not otherwise assigned to personnel within a specialty unit within the Criminal Division. The supervision and assignment of APAs to criminal cases is based on a five-region model – reflecting a division of Cuyahoga County into five (5) regions based on geography and crime statistics.

This subsection will assess the Criminal Unit of CCPO, and make recommendations for improvements therein. It will address the General Felony Unit first, and then the following specialized units as follows:

- General Felony Unit (GFU);
- Early Disposition Unit (EDU);
- Major Trial Unit (MTU);
- Internet Crimes Against Children (ICAC);
- Economic Crime Unit (ECU);
- Mortgage Fraud Unit (MFU);
- Major Drug Offenders Unit (MDOU);
- Investigators Unit (INV); and
- Grand Jury Unit (GJU).

B1-1. General Felony Unit (GFU)

This subsection will review four (4) topical areas:

- The evaluation of APAs;
- Leadership and management;
- Orientation and training; and
- Other suggested efficiencies.

At the end of the section, we will address the Community-Based Prosecution Program as a “stand-alone” activity, due to its importance to the City of Cleveland and the First Suburbs.

B1-1.1. Evaluation of APAs

Performance evaluations of support staff were also reviewed in Subsection A2-4 of this report. The findings, after interviews with both APAs and support staff, are generally quite consistent.

Assessment 1: Among APAs, there was a near-unanimous perception that – to the extent that meaningful evaluations are conducted – the criteria spelled out in the evaluation forms are not the actual criteria used when promoting APAs to specialized units, supervisory positions, or other coveted assignments within CCPO.

Rather, APAs feel that promotions are based on the win/loss ratio of their trials. This practice has created a sense of unproductive competition among APAs within CCPO. APAs were working for a total number of trials rather than supporting each other – or for the administration of justice.

Recommendation 1: There is strong support for revising the evaluation criteria to a more meaningful set of metrics, rather than the numerous metrics on the existing evaluation forms.

Assessment 2: One important criterion for evaluation should be the ability of APAs to effectively manage their personal dockets. Because the Justice Matters software contains a great deal of information that can be utilized to track an APA’s docket management, this would serve to be an objective source of information. APAs who effectively manage their dockets and properly prepare their cases for trial, may produce a greater number of pleas, thereby avoiding trials – compared to APAs who are not organized, and are therefore required to proceed to trial because they are deemed unprepared by defense counsel.

Evaluations of APAs are required to be conducted annually. This has not been practiced with any consistency – and to the extent that APAs are being evaluated, they are unaware of their evaluations.

There is currently no written process for disciplining an APA who has failed to adhere to corrective action required by a supervisor. There is a process for disciplining staff, but not the APAs in the office.

Recommendation 2: Evaluations should occur every six (6) months. Evaluation forms should require greater narrative comments than are currently elicited. Constructive criticism and the positive attributes of the APAs should be set forth in the evaluations. Those interviewed cited too many criteria, outdated criteria and inadequate space on the evaluation forms for narrative comments. The evaluations should be reviewed with the APAs, to ensure that the intent behind the evaluative comments is received and understood by them.

Assessment 3: The current evaluation format uses the numeric system of 1 to 5 to score an APA on a specific metric with “1” being the least compliant, and “5” being most compliant, with a metric. However, in practice, “5”s are never to be given and “1”s are only given in the most extreme cases. Accordingly, APAs are generally evaluated in the 2 to 4 range. The result is that little guidance is provided to APAs on areas where they are performing well and where they can make improvement.

A number of APAs commented that they are not being observed in trial, are not having their written work product reviewed, and are not being observed in oral argument before the Court of Appeals by the supervisors evaluating them. APAs perceive that they are being evaluated based on their interaction with supervisors during the file review process, when seeking an approval mark, or on anecdotal evidence a supervisor receives from other unidentified sources.

It should be noted that one of the five supervisors has recently prepared a procedures manual which is furnished to each of the APAs under his supervision. Because of the other duties and responsibilities of supervisors, many do not feel they have adequate time to observe and critique each of the APAs under their supervision.

Recommendation 3: CCPO should underscore the importance of meaningful evaluation of APAs and evaluate supervisors based on their adherence to this task.

Assessment 4: The current evaluation of APAs provides no opportunity for self-evaluation. APAs are not asked to evaluate themselves under the criteria against which they are being evaluated by a supervisor. This could be a useful process in determining the APAs’ ability to perceive their own strengths and weaknesses – which may otherwise go undetected by a supervisor.

There is no bottom-up evaluation process whereby APAs are required to evaluate their supervisors. In fact, many of the supervisors interviewed advised that they were never evaluated or were unaware of any evaluations based on their performance as supervisors. None of the supervisors could articulate any criteria under which they were being evaluated as supervisors within CCPO.

There is no posting or announcement (see Subsection A2-3) of any offering of positions for advancement to the Major Trial Unit or other specialized units within the office. There is no formal way an APA can express interest in being assigned to a specialized unit. Those interviewed were unaware of interviews for promotion to specialized units. Positions are not posted, interviews for openings are not conducted, and promotions are not based on objective criteria – all of these factors appear to contribute to a deleterious effect on morale.

APAs meet with their supervisors after trial to engage post-trial reviews. These are brief discussions about the trials and their outcomes. This is a positive practice, which APAs find helpful and beneficial. However, there is no written agenda for such meetings. The post-trial review permits a supervisor the opportunity to provide instant feedback to an APA, but it is based upon the information provided only by the APA – not the first-hand observations of the supervisor.

Recommendation 4: By historical standards, CCPO is perceived as a very young office, in terms of the age and experience of a majority of the APAs – while the supervisory staff is very mature in terms of experience and years of service. It is the middle demographic of CCPO that is most lacking. We suggest that there be an effort to identify and cultivate future supervisory staff members.

Current supervisors should mentor and educate future supervisors capable of running specialized units within the office. If this is not undertaken, supervisors with specialized knowledge and experience within a unit will leave the office or retire, leaving behind a great void in the coming years. Other particulars follow:

- Written agendas should be developed for uniformity in the items discussed between a supervisor and APA following a trial;
- Greater transparency in the promotion process is suggested – producing more positive perceptions in the office; and
- Less reliance should be placed on the number of trials prosecuted to evaluate APAs.

B1-1.2. Leadership & Management

Assessment 1: Interviews concluded that the former Prosecutor was detached from his upper-level management – which was most apparent once a policy or initiative was announced by him within CCPO. Poor follow-thru on policy implementation was recounted by several APAs – noting that a policy would be implemented by management as they intended it to be, not as communicated by him.

Recommendation 1: Policies initiated by the new Prosecutor should be communicated directly and clearly to all APAs. Metrics should be established to ensure that the policy articulated is actually being implemented by management as intended by him. This may

well involve the Prosecutor communicating with non-supervisory APAs to determine, first-hand, how the policy or initiative is being implemented.

Assessment 2: A perception exists that promotions to supervisory or management positions is based on the number of trials.

Recommendation 2: These positions should be filled by persons possessing skills beyond those of a trial lawyer. The ability to manage, mentor, and supervise APAs must be considered.

Assessment 3: The regional approach to managing the caseload of files within the CCPO received high praise for its efficiency and effectiveness. Having individual APAs take responsibility for their own cases is highly valued by the APAs and management. However, it was noted that an inherent weakness of the current regional approach is that supervisors in one region do not have the opportunity to work with or supervise APAs in other regions.

Recommendation 3: Some fine tuning can lead to improvements in the current system. There are currently five (5) supervisors marking files – each for a specific geographic region within CCPO. Supervisors should communicate with each other on a more regular basis, so there is consistency within the regions as to the criteria used to mark files. Another suggestion was that there should be more frequent rotation of APAs between regions.

Assessment 4: There is a noted disparity between the salary levels of APAs having the same relative level of experience within CCPO.

Recommendation 4: Relative salary ranges should be established for APAs who are essentially performing the same tasks. CCPO should consider establishing merit or incentive bonuses as a way of encouraging and recognizing superior performance.

Assessment 5: Interviews revealed that there exists a generational divide in CCPO.

Recommendation 5: Greater integration should be encouraged between senior APAs and the newer, less-experienced APAs – perhaps by establishing a mentoring program for new APAs. Mentoring does not involve supervising – and a formal program would provide new APAs the opportunity to seek the counsel of an experienced APA on a variety of issues and matters.

Assessment 6: There exists a perception that new hires, promotions, and other advancement in CCPO are being made on a preferential basis. This perception may not be the actual practice, but exists due to a lack of public communication about the availability of these positions.

Recommendation 6: Greater transparency should remove this perception – and also boost confidence and morale within CCPO. An internal newsletter called “Work

Product” was once circulated within CCPO. It was well received, notified personnel of current events, and also provided instructional information to APAs. It should be revived and utilized as one means of announcing promotions, the introduction of newly hired employees, retirements and other informative information on events within CCPO.

B1-1.3. Orientation & Training

Assessment 1: APAs rotating into the General Felony Unit (GFU) of the Criminal Division from the Juvenile Justice Unit are introduced to an assignment by what is referred to as the “Sixth-Man” or “Sixth Region” (Sixth). As the Sixth, the APA is assigned a moderate docket of cases and expected to ease into the duties and responsibilities of an APA by observing and learning. Interviews have disclosed that the Sixth system is not providing the basic experience an APA needs to try their initial felony trials.

There is a concern that newer general felony APAs are learning from APAs who have limited experience, especially given the current demographic of the CCPO. The result is that the Sixth is getting thrown into a regional docket without adequate experience to work a general felony docket. Even starting the Sixth Man in Region 3 (the least active region) of the five regions is helpful – but is still not providing adequate training or experience for APAs.

The opportunity for the Sixth to sit second chair is too discretionary and often left to the decision of the Sixth himself or herself. That is, the Sixth is determining whether he/she wants to take advantage of the opportunity to sit as a second chair on trials or focus more on the individual docket assigned to them.

In summary, too much reliance is placed on the individual initiative of the APA to learn or become knowledgeable about the duties and responsibilities of an APA in GFU from other APAs assigned to the same floor as a Sixth.

Recommendation 1: An APA rotating into GFU should be required to sit as a second APA in at least five (5) felony trials before being assigned first chair responsibilities in a felony case. There should also be uniform and formal instruction about basic skills provided to the Sixth APAs.

Assessment 2: The current belief is that an APA should gain the experience required for working in GFU while working in the Juvenile Justice Unit (JJU); this perception is false. The system currently in place is largely hit or miss. APAs are not receiving adequate trial experience and training in JJU – in great part because the cultures between the JJU and GFU are very different. Additionally, the training of a Sixth should not be dependent upon the persons that the APA may be exposed to when first assigned to GFU.

Currently, there are regular training sessions, dubbed the “brown bag lunches.” These sessions provide updates and training to APAs in the CCPO and are laudable, but can be improved upon with a more centralized and standardized approach.

Recommendation 2: Being a trial attorney requires constant training and education. A centralized training unit should be formed within CCPO for the following reasons:

- Such a unit would provide uniformity in the training of all APAs as to the basic trial skills deemed most necessary for an APA in CCPO;
- It would ensure that each APA is receiving a uniform, consistent minimum level of training;
- It would also permit APAs to be updated on a regular basis on new policies, initiatives, and legal matters;
- Since there are currently no formal internal continuing legal education seminars for APAs, a centralized training unit could fill this gap – and also provide particularized training that a specialized unit or an office-wide initiative may require; and
- Senior APAs within CCPO should be utilized to teach specific trial techniques to other APAs.

B1-1.4. Other Suggested Efficiencies

Assessment 1: The Justice Matters software system is well received (see Subsection A3-1). It has provided numerous advances and efficiencies within CCPO, and the administration of justice within Cuyahoga County. Despite these efficiencies, it was noted that a great deal of APA time is spent leaving the floor and walking down to the 9th floor to obtain a mark on a file from a supervisor. The policy for having supervisors remain on the 9th floor exists for two reasons:

- Confidentiality of the file review and marking process is maintained; and
- To ensure that supervisors marking files are not subject to influence by defense counsel, the court, or others.

Recommendation 1: Further consideration should be given to devising a certain level of authority that can be provided to APAs or an IC to mark fifth, fourth, and non-violent third degree felonies. Appropriate checks and balances should be embedded in such a procedure to guard against undue influence or conflicts. Another approach would be to provide APAs the opportunity to phone into a supervisor to obtain verbal authorization for a mark on lower level felony files.

Assessment 2: Much responsibility falls squarely on a GFU APA. For instance, APAs are drafting and issuing their own subpoenas, filing their own pleadings, and performing other ministerial tasks. They must attend sentencing hearings, follow thru on enforcing the payment of fines, forfeitures, and restitution orders. Additionally, a great deal of an APA’s time is spent inputting data into the Justice Matters system.

Recommendation 2: The work load of APAs should be re-examined, and the need for additional support services available to APAs should be reviewed. With proper supervision, many tasks could easily be performed by support personnel or para-professionals.

Assessment 3: GFU APAs are required to deal with the same judges during an assignment for 12 months or longer, and that this is too long. Our interviews revealed that the more frequent rotation of APAs would be preferred.

Recommendation 3: Rotate APAs more frequently – probably on the order of six (6) months, since most felt 12 months was too long, and that three (3) months would be too short. This would permit APAs greater exposure to different judges, and guard against the perception that APAs and judges are becoming too familiar. Also, since the implementation of the Justice Matters program has produced great efficiencies in docket management, more frequent rotation of APAs within a region or to other regions would not harm the management of cases in CCPO.

B1-1.5. Community-Based Prosecution Program (CBPP)

Assessment 1: Over the past 10 years, within its General Felony Unit, CCPO has created and conducted the Community-Based Prosecution Program (CRPP) -- a program intended to include the individuals and communities that have been victimized by violent and high-profile crimes.

Such felony crimes are “crimes against society” – and during the prosecution process, CBPP establishes a deserved standing to those victimized by these crimes. The program has the following features:

- It is designed to be responsive to people and their communities;
- It includes designated supervisors in CCPO assigned to police districts and to nonprofit community-based safety organizations;
- High-impact cases and cases that are brought to CCPO by the municipality, police and community organizations receive special tracking; and
- Community interest is channeled thru the assigned supervisor.

This ongoing effort has led to Court Watch and special community sanctions in sentencing. Also, an increasing number of judges have allowed community-perspective statements at the time of sentencing.

CBPP’s effort has been concentrated in the City of Cleveland and the First Suburbs – and the program has been strengthened by the initiatives of a network of community-development corporations with specific community-safety initiatives. About a dozen of these initiatives have distinguished themselves by the following activities:

- Organizing citizens' efforts to track crime patterns;
- Building neighborhood safety programs;
- Staffing Court Watch efforts; and
- Developing high quality communication between the police and prosecutor's office.

Additionally, Cleveland's Department of Community Relations Department, headed by Blaine Griffin, has developed effective links with the City's strong network of community development corporations – thereby creating the community infrastructure necessary to make CBPP effective.

Over the time that CCPO has operated this initiative, there have been periods of excellence and periods of underperformance – and the community has learned that certain key elements have to be in place for this program to work best. When done correctly, it can promote healing, strengthen the effectiveness of punishment and aid in restoration.

Recommendation 1: Continue and strengthen efforts to assign specific staff – with the goal of promoting good communication with victims, citizens, police and municipal officials.

Additionally, the scheduling of cases, pleadings and sentencing is difficult at best. Therefore, it is extremely important that designated staff maintain close contact with the interested parties and communities of a particular case.

Finally, CCPO should nurture and enhance the training of staff, supervisors and prosecutors. This is an important element of effective community prosecution.

B1-2. Early Disposition Unit (EDU)

In 2008, CCPO formed an Early Disposition Unit (EDU) to streamline an overburdened justice system and relieve jail overcrowding. The main objective was to resolve low-level felony cases expediently. Benefits of an expedited case management (ECM) program are fewer court appearances, reduced inmate transportation requirements to and from the courts, and shorter time in custody for presentenced inmates.

Assessment 1: There was overwhelming emphasis and consensus about the urgency of returning ECM to a centralized area within the Justice Center. The arraignment of a defendant on a charge and the defendant's initial first appearance used to take place contemporaneously on the 12th floor of the Justice Center. The attorney for the defendant was assigned, and an ECM conference would occur, before the visiting judge assigned to the ECM docket.

This process has been changed. Currently, a defendant's arraignment occurs on the 12th floor of the Justice Center – but the initial first appearance does not occur

contemporaneously, or before the judge arraigning the defendant. Instead, once a defendant is arraigned, the case is transferred to the trial court judge assigned at the time of arraignment for a later scheduled ECM conference.

This practice has led to ECM issues competing for a judge's availability due to other matters on that particular judge's docket. APAs are consequently spending too much time waiting for a judge's availability in the courtroom or trying to track down the defendant's counsel for appearance in a particular judge's courtroom.

Recommendation 1: CCPO should conduct an internal review of EDU's effectiveness – and initiate discussions with the Presiding Judge of the Common Pleas Court and the Cuyahoga County Public Defender to improve ECM operations. Restoring the ECM process to its original centralized operation is preferred by those involved with ECM.

Assessment 2: An overwhelming amount of the APAs' time is spent performing clerical tasks, such as entering and calendaring dates from the CJIS system to the Justice Matters system. Further, insufficient training of judges, bailiffs, police officers and other court personnel outside CCPO has created a misperception about the EDU program. For example, law enforcement agencies should understand the importance of sending information for review by EDU on a timely basis.

Finally, interviews noted that the early disposition of cases at the felony four and felony five levels are resulting in an increased burden on the General Felony Unit APAs. Because ECM first appearances are now being conducted before the judge assigned the ECM matter at arraignment, APAs working in the General Felony Unit assigned to a specific judge in a region must now deal with ECM matters appearing in their courtrooms. This was not the original intent of the EDU program in CCPO.

Recommendation 2: Greater education and understanding of the goals of ECM should be established. This will also produce time savings because law enforcement agencies will not be making routine or needless mistakes with the ability to provide corrective action.

Additionally, more APAs should be assigned to EDU, due to the increased number of cases eligible for ECM review and disposition. This need for increased staffing will be especially chronic if greater priority is to be placed in the ECM disposition of cases.

B1-3. Major Trial Unit (MTU)

The Major Trial Unit (MTU) of CCPO is responsible for the prosecution of major violent offenses including aggravated murder, murder and rape.

Assessment 1: Interviews of MTU's supervisor and assigned APAs disclosed that many of the cases presented to MTU after indictment were found to be lacking complete investigations.

Recommendation 1: Greater flexibility should be given to an MTU APA to utilize the Grand Jury to complete the investigation of a case, secure the testimony of a victim or a witness, and otherwise develop the theory of a case more fully before charging. In addition to the use of the Grand Jury, an enhanced Investigator's Unit should be available to MTU APAs to conduct witness interviews and other investigative leads required upon further review of the file.

Assessment 2: The current policy of reviewing cases appropriate for capital charges is inadequate – by providing first for the charging of capital offenses, and then only later review by an established committee to determine if continuation of a prosecution on the capital charge is appropriate. This review should occur before a commitment is made to present capital charges to the Grand Jury.

The current practice exposes CCPO to criticism that capital offenses are being charged for an unethical purpose – to produce pleas rather than charges based upon an objective criteria on the charging of capital offenses. Current practice also often results in capital counsel being assigned initially to the case, without ability to affect the assignment of counsel if the capital offenses are later withdrawn from an indictment. This is an unnecessary expenditure of resources for assigned counsel.

Recommendation 2: CCPO should promulgate policies within the office outlining the procedure and factors to be considered in determining whether a capital specification is warranted. This process should take into account the findings of the Supreme Court "Joint Task Force to Review the Administration of Ohio's Death Penalty," convened in November 2011. The Task Force is charged with providing, among other things, guidance on the current laws on the subject, data and costs, practices in other jurisdictions, and other aspects of the subject.

Additionally, a panel of experienced APAs may be designated to review murder cases utilizing an established criterion for recommendation to CCPO as to whether a capital offense should be sought and presented to the Grand Jury.

Finally, the trial of capital cases should have an APA from the Appellate Unit assigned to the case before it is charged – and this APA should continue to be assigned and work on the case with the MTU APA throughout the trial. Due to the number of issues presented in a capital case, as well as the complexity and continuing development of the law in capital cases, an Appellate Unit APA's involvement in the prosecution of capital cases is recommended.

Assessment 3: MTU APAs are assigned to one (1) of the five (5) regions established in CCPO – and not necessarily to the type of expertise required for a particular case. A great majority of MTU cases are coming from the Cleveland Division of Police Department – and their specialized investigators do not work under a regional system.

Recommendation 3: The MTU supervisor should be authorized to assign the most appropriate MTU APA to prosecute a matter based on the particular facts and circumstances presented in the case.

Assessment 4: Currently, the charging decision on MTU cases begins with the supervisor – who is also the individual making the determination for the mark on an MTU case. This scenario presents a built-in potential for resistance by the MTU supervisor to mark a file differently than the case was originally charged.

Recommendation 4: CCPO should consider experimenting with the following suggestions:

- First, a Grand Jury APA should be responsible for charging a non-capital MTU case;
- Second, for an MTU murder case without a capital specification, a three-APA panel (with one of the APAs being the MTU supervisor) could be convened to determine the appropriate mark on a file for purposes of a plea bargain; and
- Finally, this three-APA panel would then make its recommendation to the County Prosecutor or First Assistant for ultimate determination of the appropriate disposition on the case.

B1-4. Internet Crimes Against Children Unit (ICAC)

The Internet Crimes Against Children (ICAC) Unit is responsible for educating the community on the potential for crimes against children through use of computers and the internet – and the prosecution of those targeting children as victims. The staffing for the ICAC is largely dependent on grants obtained from federal programs and initiatives.

Assessment 1: ICAC's most immediate and chronic need is for a grant writer capable of applying for new grants, seeking the renewal of existing grants scheduled to expire and performing the reporting required on grants already awarded. The prior grant writer for CCPO left in February 2011.

The current recovery grant was awarded in 2009 and expires in September 2013. It funds approximately 50% of all ICAC investigator salaries – including three (3) investigators in Columbus, two (2) investigators , and partial salaries of the ICAC secretary and lead forensic investigator.

Recommendation 1: Quickly identify new sources of funding for ICAC initiatives needed in order to maintain current staffing levels after September 2013, and hire a full-time grant writer to pursue new and continued funding for ICAC.

Assessment 2: The current ICAC supervisor is unaware of whether or when any audits have ever been performed – and there is a lack of confidence in the exact amount of

funding available for certain ICAC expenditures. As one individual advised, “It’s a guessing game on monies remaining on a grant.”

Recommendation 2: The financial books and records involving funds utilized by ICAC should be audited.

Assessment 3: Currently, the expenditure of funds requires multiple layers of authorization – which may be a reason why the actual expenditure documentation is not being reported to those responsible for managing and recording ICAC finances in a timely manner.

Recommendation 3: The accountability for ICAC funds could be improved thru greater centralization of ICAC expenditures.

Assessment 4: It appears that CCPO may undertake the initiative of pursuing the investigation and prosecution of human-trafficking violations.

Recommendation 4: Hire a full-time grant writer to fund the start-up of a human-trafficking unit.

B1-5. Economic Crime Unit (ECU)

The Economic Crime Unit (ECU) is responsible for investigating and prosecuting a wide variety of complex fraud and public corruption cases referred to the CCPO.

Assessment 1: ECU is currently understaffed for the following reasons:

- The volume of cases;
- The complex nature of economic and financial fraud cases; and
- The sophisticated means and methods employed by those under investigation.

As a result, these cases demand the following:

- Review of a great deal of documentary information;
- Greater use of trained investigative staff;
- Use of a Grand Jury to develop evidence to further an investigation; and
- A high level of technical proficiency.

Recommendation 1: Review the hiring and use of trained paralegals, additional computer forensic investigators, and investigators possessing the experience and training to investigate white collar crime and financial fraud matters. CCPO should also examine whether the prosecution of licensed professionals (e.g., attorneys, accountants, physicians) for non-violent offenses should be referred to the Economic

Crime Unit for prosecution due to the collateral issues which affect the defendant's licensure.

B1-6. Mortgage Fraud Unit (MFU)

The relevance of the Mortgage Fraud Unit (MFU) is waning, due to the declining number of cases being presented for prosecution and the expiration of the statute of limitations governing the prosecution of such offenses

Assessment 1: The current focus of APAs within MFU has been directed to offenses involving real estate, prescription drugs, and drug diversion cases referred by the Drug Enforcement Administration, the Cleveland Division of Police, and the Ohio Pharmacy Board.

Currently, the Pattern of Corrupt Activity (PCA) offense (also known as the "State RICO" or "baby-RICO" offense) is being charged principally by APAs in MFU and ECU (see Subsection B1-5). There are no written or clear guidelines within CCPO that outline when a PCA offense should be charged. Likewise, there is no supervisory review over an APA's determination to present PCA charges to a Grand Jury. Consequently, there is little consistency as to when PCA offenses are to be charged.

Recommendation 1: We recommend that experienced APAs – in conjunction with the supervisor of the Appellate Unit – develop specific guidelines for use in guiding the charging decisions for PCA offenses. With no clear guidelines in place, CCPO runs the risk of facing the ethical challenge that the PCA offense is being charged in cases in order to generate pleas to non-PCA offenses.

B1-7. Major Drug Offenders Unit (MDOU)

The Major Drug Offenders Unit (MDOU) is staffed by three (3) APAs and a supervising APA. It is responsible for the following:

- Prosecuting drug-trafficking offenses containing a major drug-offender specification; and
- Prosecution of complex drug-trafficking cases and organizations.

Most cases referred to MDOU are initiated by the Cleveland Division of Police and the Cuyahoga County Sheriff's Narcotics Unit. MDOU works closely with other federal law enforcement organizations and the U.S. Attorney's Office in its investigations and prosecutions.

Assessment 1: The MDOU supervisor is tasked with serving as supervisor over one (1) of the five (5) regions of the General Felony Unit – in addition to her duties and

responsibilities at MDOU. She carries her own docket of MDOU cases, and is scheduled to retire from service in CCPO at the end of January 2013.

Recommendation 1: The MDOU supervisor should not be required to serve as a supervisor of a region within GFU. The demands placed on the MDOU supervisor and regional supervisors are too great to adequately cover both responsibilities – resulting in neither unit being given the level of attention required. This is not to indicate any fault with the current supervisor. Rather, the demands required to fully function in both capacities are more than one individual can adequately handle.

B1-8. Investigators Unit (INV)

The Investigators Unit (INV) comprises two (2) distinct groupings, as follows:

- Investigators principally assigned to assisting APAs involved in the investigation of economic and financial crimes; and
- Investigators available for general investigative assistance.

Included within INV is a paralegal.

Assessment 1: There has been a dramatic increase in the financial and economic crime cases referred to CCPO – often requiring detailed investigative, financial, and forensic analysis of documents. Too few of the current investigators have sufficient experience and training in these areas – although CCPO has expended some funds to provide additional training.

For example, there is currently only a single investigator trained in the area of computer forensic analysis, and this investigator's time is in great demand. The demand for computer forensic skills will increase beyond the availability of this investigator should CCPO expand prosecutions in the area of economic and financial crimes and public corruption.

INV has a positive working relationship with the Ohio Bureau of Criminal Investigation and the Cuyahoga County Sheriff's Department, but a staff of investigators trained in these areas will be important to address the future demands on the office.

Recommendation 1: A thorough review of the current staff of investigators, in conjunction with CCPO's priorities for investigative services, should be undertaken before any new or additional investigators are hired. Additional training may need to be provided to current investigators. Investigators with backgrounds in forensic accounting, forensic computer analysis, fraud examinations, and the aptitude to work with software utilized in the analysis of detailed documents should be considered.

Assessment 2: There have been no meaningful evaluations of investigators performed by any supervisor in the CCPO. One investigator interviewed advised that he is aware of only one occasion in the last five years when he was evaluated.

Recommendation 2: Consistent with our recommendation for regular, meaningful evaluations of APAs (see Subsection B1-1.1), we encourage the evaluation of investigators.

Assessment 3: INV investigators are housed in a small, windowless adjunct office located off of the Justice Center parking garage. There is insufficient room for them to review detailed documentary evidence. In order to make use of a restroom or sink, they are required to travel a great distance to other areas within the Justice Center to find a public restroom.

Recommendation 3: The space allocated for INV must be enhanced.

Assessment 4: Requiring witnesses to be interviewed in the Justice Center – or seen in the presence of APA's and investigators – may compromise sensitive investigations due to the targets under investigation, the evidence to be secured in those investigations, and witnesses to be interviewed.

Recommendation 4: CCPO should consider the identification of an off-site location or "safe location" available for these investigative activities.

Assessment 5: One of the responsibilities of INV is maintaining custody over bulky evidence. However, a satisfactory, computerized chain-of-custody system for Grand Jury materials or other bulky evidence received by CCPO does not exist. The current practice is for this information to be scanned into the Justice Matters system. The original materials are then located somewhere in CCPO – perhaps in an APA's office, or in a convenient storage location. There is no separate chain-of custody-log documenting the receipt or removal of evidence in CCPO.

Recommendation 5: A software package, designed specifically for the bar coding of bulky exhibits and the entry of this information into a chain of custody log while stored in CCPO, should be acquired.

Assessment 6: Currently, only a single investigator certified by the Ohio Peace Officers Training Academy (OPOTA) is on staff. This is the only investigator with full law enforcement authority.

Recommendation 6: When hiring new or additional investigators, consideration should be given to whether an investigator candidate is OPOTA.

Assessment 7: We found that a group of investigators involved in the Mortgage Fraud Unit were being supervised by one or more APAs. While certain investigators may work

closely with a distinct set of prosecutors, those APAs should not be responsible for supervising an investigator.

Recommendation 7: Supervision of investigators assigned to INV should remain under the control of the Chief Investigator.

B1-9. Grand Jury Unit (GJU)

The Grand Jury Unit (GJU) is generally responsible for the charging decisions on cases presented to the Grand Jury – and is comprised of experienced APAs who have served as trial attorneys. Interviews of APAs in GJU – as well as throughout the Criminal Unit – revealed consistent critique and criticism.

Assessment 1: The City of Cleveland is responsible for charging cases presented through its prosecutor's office – and interviews noted several concerns relating to the overcharging decisions made by the City. There, misdemeanor violations are being overcharged as felony offenses.

As a result, a defendant indicted on a felony offense is required to confront the overcharging issue after indictment. For example, there were consistent complaints by APAs that domestic violence cases were being inappropriately charged as felony kidnapping offenses. Overcharging produces many unfortunate circumstances – including higher bond recommendations and the reluctance of judges to agree to a reduction from the original charges.

Recommendation 1: Grand Jury transcripts from certain sample cases should be prepared and reviewed to determine baseline practices in GJU. Eventually, CCPO should assume responsibility over the charging of felony cases – and should explore discussions with the City of Cleveland on this issue. Since CCPO is responsible for the prosecution of felony offenses within Cuyahoga County, CCPO should be making the charging decisions. Consistency in the policy and practice of charging defendants within the County is critical to the administration of justice.

Assessment 2: In general, many of the referring law enforcement agencies are providing complete, thorough investigative files for GJU review. However, certain agencies are presenting files that do not contain the complete investigative file – or in many cases, the investigation itself was incomplete before presentation to GJU for charging. Importantly, there seems to be a pattern common to the offending agencies. As a result, cases are being undercharged, overcharged, or not being charged altogether in an indictment.

Recommendation 2: Certain referring law enforcement agencies should be directly educated about CCPO's requirements before a file will be accepted for charging.

Assessment 3: Initial reports may not include evidence which is determined to have existed or should be collected. For example, an initial report may fail to disclose that a photo-array was conducted, or that certain evidence, such as toll records, was subpoenaed.

Recommendation 3: GJU APAs responsible for reviewing a file and making a charging decision should have the authority to return a file to an investigating agency – requesting more complete information or investigation because they are in the best position to obtain certain evidence for a file. For example, if a witness before the Grand Jury had to testify to the results of a laboratory report and the file does not include a copy of that report, the GJU APA is in a best position to secure a copy of the lab report for the file.

Assessment 4: If it is determined that a case file is missing information, or if that information is incomplete, the GJU APA is left with the responsibility of collecting such information. As a result, APAs' time is being diverted from the tasks of preparing for trials, attending sentencing hearings, and performing other responsibilities.

Recommendation 4: Greater education and communication by GJU with law enforcement agencies routinely presenting incomplete investigative files must be developed. A more thorough review of a file by GJU can aid in the determination of the completeness of an investigation before it is presented to the Grand Jury for charging. Therefore, a checklist of items should be created that law enforcement agencies can use before submitting a file for charging. This practice will ensure that APAs receiving charged cases are not required to spend excessive time gathering information from the referring law enforcement agency or completing the investigation of a case already charged.

Assessment 5: Major Trial Unit (MTU) (see Subsection B1-3) cases could benefit from an expanded or more traditional use of the Grand Jury.

Recommendation 5: The Grand Jury should be utilized to develop the evidence and witness testimony more fully for preparation and use in trial. For example, with most rape charges, testimony from the victim before the Grand Jury may be a sound practice before a case is charged.

B2. CIVIL DIVISION (CIV)

The Civil Division (CIV) of CCPO is primarily responsible for representing various county agencies, especially when they are confronted with litigation.

Assessment 1: There is great and perhaps damaging uncertainty surrounding CIV's responsibilities with the advent of the new law department for the County Executive and Council. For example, it appears that the hiring of new APAs for CIV has been hampered, and retaining current APAs could also be problematic. As a result, it is

imperative that CCPO stake out a clear, definable role for CIV – consistent with the legal opinion of the Ohio Attorney General.

Recommendation 1: If CCPO intends to retain its historic authority as the trial lawyer for County government, it should become informed on the work of the Charter Review Commission. CCPO should also continue to work and coordinate with the County Executive to craft formal memoranda of understanding on clearly-defined roles and responsibilities of CCPO and the County Law Director.

Assessment 2: CIV's integration and use of Justice Matters can, at best, be described as haphazard. The Tax Appeals Division within CIV fully utilizes Justice Matters for the electronic docketing and tracking of critical dates.

However, other litigation matters handled by CIV do not utilize Justice Matters. For example, the only calendaring system utilized for the docketing of critical dates and litigation is an electronic calendar. Entries into this calendar are the responsibility of individual APAs. There is no standardization of information needed to be placed on the calendar system, and decisions about such information to be entered are left to the discretion of an APA.

Recommendation 2: The docketing of all court dates, all responses to pleadings, and any other critical litigation dates should be entered into an electronic docket system and Justice Matters. This will ensure that there are checks and balances built into the system of notifications. Should an APA forget to enter a critical date, or be unavailable to cover a particular matter, the office will be alerted and able to address the issue.

Assessment 3: Currently, litigation matters are assigned to APAs on a random basis, regardless of the County agency involved.

Recommendation 3: Consideration should be given to whether certain APAs should be responsible for litigation matters involving particular county agencies. This continuity of representation by an APA over matters involving a specific county agency may ensure the following:

- Agencies will respond consistently to legal issues;
- APAs will not have to reestablish attorney-client relationships with individual members of an agency; and
- APAs will have greater familiarity with the legal issues confronting a particular agency.

Certain assignments of litigation matters should be made to teams of APAs rather than a single APA – especially where the matter involves complex legal and factual issues. This will ensure that the appropriate staffing decisions are made immediately at the time the case is assigned and also allow oversight of the distribution of work.

Assessment 4: CIV has an experienced, talented bench of litigators. However, even the most talented professionals require routine supervision of tasks. Currently, no regular file review is conducted between the APAs and the CIV supervisor.

As a result – if there is an issue festering in a case – this absence of regular file reviews may mean that the problem is not discovered until it becomes chronic. At that point, it may be too late to address or correct the problem. There are no checks and balances to ensure that an individual APA properly manages a case from beginning to end. There is a need for sufficient oversight and direction with respect to certain approaches to litigation.

Recommendation 4: A policy of regular file reviews by the supervisor of CIV should be instituted.

Assessment 5: Need exists for greater collaboration among practice groups within CIV – and it should occur on a frequent and organized basis.

Recommendation 5: Collaboration will assist in the development of issue-spotting and problem-solving among APAs thru agreed strategies. It will also provide the opportunity for greater standardization in the approach to legal issues regularly confronted by CIV. Quarterly meetings of practice groups within CIV should be encouraged.

Assessment 6: CIV does not appear to engage in any internal continuing legal education training unique to the issues that it regularly confronts. There are no regular meetings between members of CIV to discuss pertinent topics or common issues. Training opportunities at regional or annual training seminars to expose APAs to new and different approaches to legal issues handled by other jurisdictions also appear to be insufficient.

Recommendation 6: CIV's supervisor should institute a proposed plan of regular monthly meetings with CIV members to discuss current developments, achievements, strategies, case-management issues and continuing legal education opportunities.

Assessment 7: CIV has a need for the use of law clerks – currently there is only one (1) part-time law clerk available to APAs in CIV. It is not utilizing the externship program offered by both the Cleveland-Marshall College of Law and Case Western Reserve University School of Law.

Recommendation 7: CIV should explore involvement with the externship programs of both law schools. Participation with the externship program could provide, at no cost, the opportunity for CIV to obtain the participation of externs while also exposing law students to the work of CIV.

Assessment 8: Due to the recent revaluations of real property in Cuyahoga County, as well as the number of appeals filed with the Board of Revision (BOR), a large number of

cases requiring CIV's involvement have and will continue to be generated. Interviews revealed that BOR is understaffed and unable to provide CIV with the underlying documentation required for cases set for hearing. This issue is only going to become more chronic over time.

Recommendation 8: CCPO may be required to intervene and communicate to the appropriate County leaders the need for additional staffing at BOR to enable it to represent the County in a timely and efficient manner.

Assessment 9: Several of the APAs interviewed noted that decision-making by CIV's supervisor is often indecisive or too lengthy. In several instances, this eventually led to hasty responses. It does not appear that decision-making is being made in a deliberative atmosphere where stakeholders have the opportunity to provide insight and reasons for a particular action. Rather, matters are taken under advisement by the supervisor with decisions being delayed too long.

Recommendation 9: Not to decide is to have decided. Untimely decision-making by supervisory personnel cannot jeopardize the choices available. If supervisory indecision is determined to be harmful to a matter or client relationship, the APA involved should be empowered to report the matter to the First Assistant or the County Prosecutor without fear of the consequences.

B3. APPELLATE DIVISION (APP)

The Appellate Division (APP) is responsible for: oversight of the appellate review of criminal cases in state and appellate courts; post-trial proceedings; filing or defending various extraordinary writs; drafting and review of search warrants and affidavits; death penalty litigation; representation before the parole board; and, the supervision of law clerks.

Assessment 1: Current staffing level of APP may require additional APA support. This is especially noticeable in the areas of review of search warrants and post-conviction proceedings. An APA is required to prepare after-hours search warrants, and APAs take weekly turns carrying a cell phone for such duties.

It is not uncommon for an APA to receive after-hours calls and to spend a couple of hours drafting a search warrant affidavit – resulting, in some instances, being responsible for multiple warrants in a single night. This responsibility is considered part of the duties of the APAs, and no flex time or compensatory time is given.

Recommendation 1: One short-term solution to staffing issues may be addressed by requiring newly-hired APAs to rotate through APP for a definite period of time.

Assessment 2: APP currently maintains an informal bank of pleadings available to APAs preparing appeals. This brief-bank is available through the SharePoint software

system. Currently, APAs either perform legal research on their own, or must inquire of other APAs to determine who may have prior experience with a particular legal issue.

Recommendation 2: APP should create a more formal bank of available legal research and recurrent legal arguments on a variety of the legal issues confronting APAs during the appeals process. While the brief bank should not serve as a substitute for an APA's legal research, it may serve as a useful starting point.

An appellate brief bank may also produce consistency in legal arguments advanced on particular issues and ensure that the most current legal opinions on an issue are captured for an APA's use.

Assessment 3: Currently, APP is not fully integrated into the Justice Matters system. In the past 10 years, very little change has been made to the management of the APP docket. CCPO's IT department and members of APP met two (2) years ago and discussed methods for Justice Matters implementation in APP. It is our understanding that a module for APP has been prepared for implementation, yet is not fully implemented.

Recommendation 3: Full implementation of this appeals module to the Justice Matters software system should be implemented.

Assessment 4: APP is not properly utilized by CCPO on important charging decisions. Currently, APP is involved in decisions concerning capital murder charges, but there appears to be no detached review within CCPO when it concerns charging Pattern of Corrupt Activity (PCA) as an offense.

Recommendation 4: A PCA offense is most frequently utilized by members of the specialized units (e.g., ECU or MFU), but APP should also be involved in such charging decisions. Additionally, greater uniformity is recommended when deciding to charge a PCA offense. This will insulate CCPO from allegations that a PCA offense is being charged in order to force a plea in a case.

Assessment 5: APP is making use of the externship programs offered by the local law schools. The externship program is a useful program for recruiting prospective APAs following their graduation from law school – but it is different from the law clerk program because externs are not paid for the work performed, while law clerks are paid. Externs can be reviewed and evaluated as potential law clerks provided there are proper guidelines for such hiring. A perception exists that the position of law clerk is awarded for criteria other than merit and qualifications.

Recommendation 5: The process for hiring law clerks should be revised.

Assessment 6: Uniformly, all the APAs assigned to APP believe their unit to be a bright spot in CCPO. They all complimented the high level of comradeship among unit

members. Unit APAs enjoy having their own dockets, and time to do research and prepare the arguments to be presented before the Eighth District Court of Appeals.

With the exception of PRC and expungement requests, an APA assigned to APP has limited exposure to the Common Pleas Court judges. Some APAs have spent time in the General Division. However, some of them have previously been law clerks in APP and were hired directly into the unit after passing the bar exam.

Recommendation 6: APAs assigned to APP should be encouraged to sit as second chair in selected cases. Additionally, CCPO should promulgate policies within the office outlining the expectation for responding to commutations, pardons, expungements and PRC requests.

B4. CHILD SUPPORT ENFORCEMENT UNIT (CSEU)

This subsection will assess the Child Support Enforcement Unit (CSEU). It employs 31 attorneys (including ICs and Supervisors) – and is a mix of “permanents” and “rotaters.” CSEU is comprised of three (3) sectors, as follows:

- Post-Decree Domestic Relations and Uniform Interstate Family Support Act (UIFSA) – located in the Old Courthouse;
- Criminal Non-Support – also located in the Old Courthouse; and
- Juvenile Establishment and Enforcement – located in the Juvenile Court building.

This section will assess CSEU, and make recommendations in the following areas:

- Unit-wide review;
- Post-Decree Domestic Relations & UIFSA Division;
- Criminal Non-Support Division; and
- Juvenile Establishment & Enforcement Division.

B4-1. Unit-Wide Review

Assessment 1: While there are many dedicated and hard-working APAs in CSEU, interviewees reported that under the previous administration it has often served as a “dumping ground” for APAs who have not been successful in other units. For example, the “rotaters” who are in CSEU are generally hard-working and quick to learn the area of law, but are looking to be advanced quickly to the General Felony or Early Disposition Units.

There are several “permanents” – who either specialized in child-support law prior to joining CSEU or have learned child support law since joining the unit. However,

according to those interviewed, there are also several who are not carrying their workload and are underperforming.

In some instances, files from underperforming APAs are salvaged from their offices and redistributed to other APAs for action. In other instances, cases are dismissed by the Court because people have put “motion packets under their desks for three months.” Some APAs are frustrated by the “lack of accountability” and because they see “the same mistakes by the same people.”

CSEU is often treated as a “stepchild” in CCPO, and is not invited to interoffice CLEs – or when invited, the CLE has nothing to do with the areas of law in which these APAs practice. In some instances, CCPO will “disinvite” APAs from CSEU because they “don’t have room.” APAs are also not sent to conferences in their practice area. According to APAs, this lack of support from CCPO has a negative effect on their morale in the unit.

Performance evaluations, with scales of 1 to 5, are conducted by the Supervisors or ICs with each APA in CSEU but they are “never followed-up on” by CCPO’s human resources department. According to numerous APAs, it appears that “3s” are encouraged and “5s” are strongly discouraged. One high-ranking individual remarked that she was told, “If you’re giving 5s, what do we need you for?”

Recommendation 1: The practice of sending APAs to CSEU who are underperforming or as “punishment” should end. Performance-improvement plans should be created for APAs who are consistently underperforming and – if they continue to underperform and fail to meet the goals set by CCPO – those individuals should be terminated. CSEU would benefit from having more “permanents” in the office who have previous civil experience or expertise in the area of child support law – similar to what has been done in the Children & Family Services Unit.

Recommendation 2: It appears that many APAs have no understanding of other CCPO units. Nor do they receive much training – with many APAs simply being told to read the applicable statutes and unit handbook and then “get to work.” Lack of training may be a reason for underperforming by some APAs. As a result, the following:

- CCPO should initiate a formal training period for newly-hired APAs, so that they learn the overall mission of CCPO and about the goals of every unit in the office; and
- There also should be a formal training and “shadowing” period for APAs starting in each unit.

Recommendation 3: Initiate a CLE program for the APAs in CSEU that is tailored to the subject area in which they practice. Endeavor to find conferences that would be helpful to their practice of law. Include all units of the CCPO in CLEs as much as possible.

B4-2. Post-Decree Domestic Relations & UIFSA Division

Assessment 1: The space that the Post-Decree Domestic Relations & UIFSA Division occupies in the Old Courthouse is on the basement level, and is wedged into a relatively small space. The APAs in this unit stated that they often received newer technology and equipment long after their counterparts in the Justice Center and Juvenile Court.

There is at least one APA in a wheelchair, and the space is poorly-designed for wheelchair access – including a small desk that sits in a hallway outside of the office that needs to be moved by a member of the staff every time this APA wants to move in or out of the office. In order to be granted access to the office, this individual needs to ring a doorbell to alert staff to move the desk from the doorway.

Recommendation 1: If it has not already been done, the Post-Decree Domestic Relations & UIFSA Division office space in the Old Courthouse should be evaluated for its accessibility for people with disabilities. The entrances should be made more accessible, so that employees in wheelchairs do not need furniture moved or to ring a doorbell in order gain access to their offices.

B4-3. Criminal Non-Support Division

Assessment 1: Currently, according to one APA, the cases brought by the Criminal Non-Support Division are “slam dunks,” but there are other cases that have merit and could be filed and handled by “rotaters” in CSEU.

Recommendation 1: It was suggested by several APAs that “rotaters” who are looking for more litigation experience could work on cases in the Criminal Non-Support Division. There could be some benefit to both the “rotater” in gaining valuable litigation experience, as well as to CCPO and CSEU if the cases are successful.

B4-4. Juvenile Establishment & Enforcement Division (JEED)

Assessment 1: There are two (2) teams headed by ICs in JEED. These two teams, while well-managed according to the APAs, have very different policies and procedures and even interpret cases differently. Thus, two teams in the division are making different, sometimes opposing, arguments before the judges and magistrates in the Juvenile Court.

Further, if an APA is out sick and needs to have a hearing covered, only an APA from the same team can do so because of the different policies, despite the willingness of other APAs in CSEU to help.

Recommendation 1: Create consistent policies and procedures for CCPO and this specific division to minimize confusion among APAs – in particular those on different

teams in JEED – and to foster more clarity in arguments before the magistrates and judges of Juvenile Court.

B5. CHILDREN & FAMILY SERVICES UNIT (CFSU)

This subsection will assess the Children & Family Services Unit (CFSU), and make recommendations for improvements therein.

CFSU employs 19 attorneys, including ICs and the Supervisor. It is divided into three (3) teams with an IC overseeing each team. Each team is located in one of three (3) buildings:

- Jane Edna Hunter Building, 3955 Euclid Avenue;
- Old Brooklyn Office, 4261 Fulton Parkway; and
- Fairfax Neighborhood Family Service Center (Quincy Place), 8111 Quincy Avenue.

Assessment 1: For many years, CFSU was a place where APAs were sent if they couldn't "cut it" – and it was comprised of approximately half "permanents" and half "rotaters." Over the past two years, CCPO has worked to staff the CFSU entirely of "permanents" – as well as with APAs who had previous experience in family law or who joined CCPO for the specific purpose of joining CFSU.

Recommendation 1: Continue the activities of the last two years. According to those interviewed, there is a developing "consistency" in the work performed by APAs in CFSU. Everyone is willing to help one another out and the APAs have a solid understanding and knowledge of the law.

Assessment 2: CFSU is currently in the process of shifting to Justice Matters, but there are complaints that it is time-consuming due to initial data-entry requirements. This can be more challenging for the APAs as they are also required to pull documents from the other three (3) systems that they use – ICASE (a Juvenile Court system that includes case plans, judgment entries, and semi-annual reviews); FACTWIS (a system that has scanned documents from case files); and, SACWIS (a State system that tracks agency families, including referrals and activity logs).

Recommendation 2: Staff acknowledge that data entry will become easier to manage as they become more accustomed to Justice Matters. However, several believe that one or two paralegals could be helpful for CFSU, so that the APAs are doing less "clerical" work and focusing more on the law.

Assessment 3: Often, a case tried by an APA in CFSU has a correlating adult case to be tried in the Justice Center. However, coordination between CFSU APAs and the APAs handling the adult matter rarely occurs, despite the offers of help.

Recommendation 3: CFSU's APAs would like more interaction with other units within CCPO. They believe that they can be helpful to those trying the adult cases because they have likely worked on the case since its inception, have talked with witnesses and family members and know the files.

Assessment 4: Interviewees claimed that there is also little or no follow-up from human resources when evaluations are submitted.

Recommendation 4: Over the years, CFSU has created its own performance evaluations because it found the evaluations of CCPO lacking in substance and depth. The supervisor has created Performance Improvement Plans for APAs who are underperforming and has seen growth from those same APAs. This issue is a concern throughout CCPO (see Subsections A2-4 and B1-1.1), and must be addressed comprehensively.

Assessment 5: Often, APAs are approached with the facts of a case that can be troubling – but do not rise to the legal standard of abuse or neglect. CFSU APAs believe that the smartest and best way to confront such circumstances is to “push back” regarding the facts in a case – thereby forcing the social workers to investigate more fully.

Recommendation 5: Continue and enhance the policy of “effective gatekeeping” – the collection of data and measuring of performance with regard to case intake. Look for patterns in the cases that have been brought. For example, are the cases that are not properly or more fully investigated coming from workers in the same unit or with the same supervisor?

Assessment 6: Communication within CCPO appears to be an issue for CFSU and the Child Support Enforcement Unit (CSEU). CFSU APAs and staff are moved to CSEU with no explanation. The information disseminated by CCPO is inconsistent, and is not given to every Unit. As one APA said, “There are things going on in (CCPO) that we don't know about. Different units have different levels of information.”

Recommendation 6: Implement the recommendations for internal communications made in Subsection A1-2.

Assessment 7: “Rotaters” are unclear about eventual advancement to the General Felony Unit and other units with the Criminal Unit. Some “rotaters” with less time in the CCPO are advanced before “rotaters” with more time in the office. This lack of transparency or communication affects morale and confuses APAs on how best to advance in CCPO. There is also little or no incentive for higher achievement, since “5s” on the performance evaluations are strongly discouraged.

Recommendation 7: Recreate the performance evaluations so that “3s” are not seemingly the highest score an APA can receive. Consult with the supervisors in the Units and create evaluations that are tailored to their mission and goals. Do not

discourage “5s,” but rather encourage APAs to strive for the highest achievable score. Communicate clearly how APAs are advanced in CCPO, so that there is no gossip, grumbling, or speculation (see Subsections A2-4 and B1-1.1).

Assessment 8: CFSU APAs note that the lack of minority representation among CFSU staff is inconsistent with the composition of the population of Cuyahoga County (see Subsection A2-6 regarding staff diversity). An example given was the (lack of) attendance of African-American APAs at national conferences (e.g., the National Black Prosecutors Association Conference). APAs attended this conference for many years before they were told that it was no longer in the budget. However, according to some APAs, employees of CCPO attended other conferences during this time that had not previously been patronized – thereby creating the perception of a double standard.

Recommendation 8: Implement the recommendations made to encourage staff diversity made in Subsection A2-6.

B6. JUVENILE JUSTICE UNIT (JJU)

CCPO’s Juvenile Justice Unit (JJU) appears to have a unique culture and camaraderie as a training ground for new prosecutors. APAs consistently report having a level of trust with those APAs supervising them and appreciate the training they receive. There are a handful of areas that could be improved to make JJU more effective – including intake reform, training issues and operation of the courthouse.

Assessment 1: JJU consists of 18 APAs, including one In-Charge supervisor (IC) for intake. The former JJU supervisor recently retired and has not been replaced.

JJU is considered a training ground to teach new APAs how to try cases and manage criminal dockets. APAs are initially assigned to intake for a period of time before being assigned to handle a docket of cases before two magistrates. APAs are eventually assigned to a docket before two judges prior to being rotated to the General Felony Unit.

Every APA interviewed conveyed the same perception about JJU: it is considered a “safe” environment to learn and make mistakes. JJU supervisory staff have developed a training system for new attorneys, as follows:

- A packet of materials for new APAs on how to try a case (see Exhibit 16);
- Direct supervision of APAs in trial and timely feedback to the APAs;
- Training of APAs on Justice Matters software regarding intake procedures and the many features the software offers; and,
- An “open door” teaching mentality by supervisors, who patiently respond to questions and enjoy training new APAs.

Recommendation 1: Intake reform is the most glaring issue for JJU. Currently, Juvenile Court personnel charge approximately 80% of juvenile crimes, instead of APAs. Unfortunately, court personnel are not attorneys. Everyone commented that the charges are frequently incorrect and not supported by the evidence. As a result, APAs have to either spend additional time and resources correcting the charges to conform to the facts and evidence – or the charges are dismissed because they cannot be proven at trial.

JJU recently began charging cases for Cleveland, East Cleveland, RTA, CMSD, CMHA, CSU and CWRU police. The Juvenile Court staff charges for all other cities and agencies. In addition to the problems with non-attorneys charging cases, APAs charging crimes would allow a quicker response time between the crimes occurring and the relevant charges filed – benefiting both the community and CCPO.

A proposal was also made for a regionalized charging department in CCPO – with the intent of fostering positive relationships with the respective communities, police agencies and juvenile detectives.

Apparently, charging responsibilities have been an ongoing struggle between CCPO and the Juvenile Court. We recommend CCPO work with the Juvenile Court administrative judge and other court personnel to develop a memorandum of understanding (MOU) for a proposed pilot program to allow CCPO to charge more crimes – and the Juvenile Court intake unit to assist more with diversion of lower level crimes (see Exhibit 17). It is our understanding that the MOU was presented to the former prosecutor and no further action has been taken.

Recommendation 2: Training is a critical issue. Outside of the structure described above, JJU does not have a formal training program for new APAs, other than receiving daily experience in the courtroom and help from other APAs.

Everyone appreciates having two APAs share an office, so that they can learn from each other. However those interviewed agreed that another experienced trial attorney would add additional opportunities to teach APAs and provide a different perspective on trying cases.

APAs would welcome an opportunity to be mentored by other experienced APAs. If mentoring is valued, a suggestion was made to consider whether a senior APA's mentoring should be a component of the senior APA's evaluation. The Ohio Supreme Court's new program that allows attorneys to mentor younger attorneys – even in the same office – for CLE credit could also be considered. However, everyone recognizes that heavy dockets and time constraints may hinder the mentoring process.

Recommendation 3: As the JJU supervisor recently retired and has not been replaced, an experienced supervisor with trial experience should fill the void.

Recommendation 4: Performance evaluation is once again an issue and concern – as it is all across the CCPO (see Subsections A2-4 and B1-1.1). The APAs requested clarity on how they are evaluated and what criteria they must meet in order to rotate to the General Felony Unit (GFU). The current perception is that rotation depends on how long one has been with the unit (i.e., first-in, first-out).

As an aside, the “first-in first-out” process seems to encourage and foster an environment of open learning rather than distrust and competition. An objective list of skills and/or trials or events that must be achieved may also aid with training and transparency as to the required measures considered when determining whether to rotate an APA to GFU. It would also ensure better-qualified and -trained APAs.

APAs also requested clarity on their pay scale. For example, what goals do they need to achieve to qualify for a pay increase? There appear to be inconsistent pay schedules instituted among the various APAs.

Recommendation 5: “On call” duty is another consistent issue. Every APA is required to be “on call” at least two weekends a month overnight and at various times throughout the week. On-call APAs are contacted as needed – to charge complaints and to admit juveniles to detention homes outside of regular business hours.

On average, an on-call APA may receive two to six calls in an evening. Each call takes approximately 30 minutes to handle. A common complaint is that the calls, especially in the middle of the night, are time-consuming and interfere with work performance – especially with APAs who frequently have trials the next morning.

CCPO should consider hiring a third-shift prosecutor or staff member to address charges that occur outside of normal business hours. While everyone appears willing to work above and beyond, middle-of-the-night charging issues are a frequent complaint.

Recommendation 6: Courthouse passes were requested. Most courthouses allow employees to have a court-issued identification card that allows the employees to bypass metal detectors. JJU APAs want to avoid the line for metal detectors and be able to enter the building similar to the Justice Center and other court buildings. In addition, those who park in the Juvenile Court building and take elevators to their respective floors avoid the metal detectors altogether.

Recommendation 7: Address the several issues of rotations to GFU – including the following:

- **Criteria to rotate:** As previously discussed in this section, an objective list of expectations to be accomplished for promotion to GFU would provide transparency and trust amongst the newer APAs.
- **Rotation notification:** Little notice is provided when an APA is about to rotate to GFU. As a result, it is difficult to manage rotating APAs’ dockets. APAs

usually receive notice that they will be rotating within one to two business days – typically being notified on a Wednesday that they are to report to GFU the following Monday. Several requests were made:

- * Notice should be given at least one week in advance to work with the APAs taking over the rotating APAs' dockets in cases set for trial; and
- * Permission should be given for APAs to return to Juvenile Court to try significant cases they have been working on – especially rape cases, where they have developed a rapport and trust with the victim.
- **Rotating-APAs' dockets:** Interviewees complained that some rotating APAs leave behind disorganized files with incomplete work and discovery issues. Some suggestions were made:
 - * Create a system to ensure that APAs are regularly entering notes into Justice Matters, responding to discovery and issuing subpoenas, for example; and
 - * Conduct random checks of files – to train APAs and assure that files are being properly prosecuted.
- **Training for GFU:** JJU APAs generally do not know what to expect once they are rotated to GFU. Some express an interest in a shadowing program for the first week they are assigned to GFU.
- **Flex-time/part-time issues:** APAs consistently feel that the 16-hour flex time is inadequate to accommodate the long hours they work. On a larger scale, the maternity policy and/or flexible schedules may need to be considered to retain good employees. Some APAs are interested in sharing dockets and/or part-time positions – particularly for new mothers.

It is believed that these simple changes would also resolve the issue of multiple APAs being assigned a case – and develop better community relations with the victims and witnesses. In the past, APAs were prohibited from returning to Juvenile Court for a specific trial.

B7. PUBLIC INFORMATION OFFICER (PIO)

The Public Information Officer (PIO) holds a variety of duties and responsibilities within CCPO, including the following:

- Responding to public records requests;
- Dealing with the media requests for information;
- Preparing the County Prosecutor and individual APAs for public releases;
- Preparing the annual report for CCPO;
- Tracking specific cases which may have a public interest; and
- Maintaining content on electronic media (e.g., website, Facebook, Twitter).

Assessment 1: The PIO currently maintains a log of all public records requests received by CCPO – including the date a public records request is received and ultimately when the response to the request is generated. The estimated time for

responding to public records requests is approximately two (2) weeks. With the introduction and implementation of the Justice Matters system, the speed by which a public records request can be generated should greatly improve response time.

Recommendation 1: Any public records request falling outside of a one-week response time should be examined to determine the nature and reason for delay. The average response time for public records requests can and must be improved.

Assessment 2: The PIO was also partly responsible for production of an internal CCPO newsletter named “Work Product” – and we reviewed various issues. The newsletter was well done and well received by APAs and CCPO staff. It reviewed professional issues for APAs, highlighted significant activities of CCPO, introduced the office to APAs, staff, and updated on former APAs. Additionally, it addressed historical issues involving CCPO, and summarized the good work of APAs and staff outside the office.

Recommendation 2: The internal newsletter of CCPO should be revived. Additionally, APAs should be reminded of the importance of working with the PIO – including updates on cases the PIO is tracking.

Assessment 3: The PIO noted the need to update information on CCPO’s website, and to refresh and improve the current format of the website. The website is an important portal thru which CCPO may transmit information to the media and general public. It can be much more user friendly and provide access to greater content – thereby serving as a resource through which requests for information may be addressed.

Recommendation 3: The CCPO website should be reviewed and updated.

Assessment 4: A survey of CCPO’s press conferences and press releases concerning criminal matters under investigation or being prosecuted, demonstrated that the office does not have a media-relations policy. A well-defined media-relations policy is important to the public interest – because receiving information thru the media sometimes directly conflicts with effective and responsible law enforcement. The significance of such a policy is even greater, if individual APAs are to be authorized to address the media concerning cases under their control.

Recommendation 4: Review current U.S. Department of Justice guidelines in the creation of a media relations policy for CCPO.

C. FORECLOSURE

INTRODUCTION

This section examines CCPO's foreclosure services by reviewing the following units of activities:

- Tax Foreclosure Unit (TFU);
- Foreclosure Community Assistance Program;
- Delinquent Taxes & Collections (DTAC) analysis.

C1. TAX FORECLOSURE UNIT (TFU)

This subsection will assess the Tax Foreclosure Unit (TFU) of CCPO, and make recommendations in the following areas:

- Inventory of tax foreclosure files;
- TFU organization;
- TFU staff training;
- TFU management;
- TFU file-management analysis; and
- TFU case-management analysis.

C1-1. Inventory of Tax Foreclosure Files

Assessment 1: The Tax Foreclosure Unit (TFU) has transitioned to a paperless case-management system. There are no paper files; all records are either electronic or scanned copies of paper records. The case management system (CMS) is a module of the Justice Matters software in use throughout CCPO.

All parcels designated by the Cuyahoga County Treasurer (Treasurer) for tax foreclosure are uploaded by Treasurer staff into CMS. Once parcels are in CMS, the files cannot be lost.

Recommendation 1: No recommendation. File inventory is not a problem because CMS automatically inventories TFU's files.

C1-2: TFU Organization

Assessment 1: TFU employs one (1) supervising attorney (APA), and five (5) staff attorneys (all APAs). The staff attorneys describe themselves as autonomous or self-directed – but structurally report to the supervising attorney.

On the staff side, TFU employs one (1) head of staff, and 16 support staff members. Support staff members report to the head of staff – who, in turn, reports to the supervising attorney.

The five (5) staff attorneys do not have supervisory responsibility for support staff members – and individual support staff members are not assigned to individual attorneys. Since support staff report to the head of staff, the attorneys – who have professional responsibility for the cases – do not supervise the support staff who prepare their cases.

This result seems less than ideal – the head of staff supervises 16 – while the five (5) attorneys together supervise none.

Additionally, four (4) support staff members perform double duty – they have standard, case-based responsibilities, but also conduct the initial research for all cases. It is openly acknowledged that these support staff members are given more responsibilities than the others, because they are more skilled or adept.

Much is expected of the support staff. Under CMS, the staff attorneys have limited roles in tax foreclosure cases because most of the work is done by staff. As a result, support staff must exercise decision-making and discretion throughout the tax foreclosure process.

Support staff pay is low. As a result of low pay, support staff turnover is significant. More, TFU is seen as a stepping stone to better positions within CCPO.

Recommendation 1: Each attorney should be assigned one (1) experienced support staff member and one (1) less-experienced support staff member. The more-experienced support staff member would be classified as a paralegal. The paralegal would be paid more and given authority to exercise limited discretion in the tax foreclosure process.

The less-experienced support staff member would be classified as a legal secretary and would handle the less-skilled duties involved with his or her attorney's tax foreclosure cases and have the opportunity to advance to a paralegal position.

Recommendation 2: Support staff members not assigned to individual attorneys would be given specialized functions (e.g., training, community outreach) and would be assigned to the head of staff. The head of staff would directly supervise the specialized support staff and indirectly supervise the attorney-assigned support staff.

The head of staff and attorneys would, in turn, answer to the supervising attorney. This structural change would require altering the CMS and case management (see Recommendation 1 of Subsection C1-6).

In sum, this structural change would create an attorney-driven culture with much more supervision and development of support staff resources.

Recommendation 3: The title of TFU's supervising attorney should be changed. The title “supervisor” does not convey the impression that this person is in charge and responsible for outcomes. Instead, a “supervisor” is generally understood to be an intermediate-level leader. The title of the head of TFU should be changed to “section chief” or “department head” – or some other title which conveys authority and final responsibility for outcomes.

Recommendation 4: CCPO should make clear that TFU support staff is off-limits for lateral transfers within the agency. While support staff should not be denied the opportunity for advancement, CCPO should insist that TFU support staff members are not considered for sideways or lateral moves within CCPO. Disallowing such lateral transfers of support staff may lower the turnover rate within TFU.

C1-3: TFU Staff Training

Assessment 1: A formal training manual does not exist for TFU. While TFU has produced a series of “how-to” guides for the direction of support staff, no comprehensive and uniform manual exists. New support staff members shadow a more experienced staff member and learn on the job. Training seminars occur occasionally. Attorneys informally coach support staff members in the course of tax foreclosure case work.

Recommendation 1: A formal training manual should be produced and maintained. Tax foreclosure is an intricate process with many steps, and TFU support staff is required to make decisions and exercise discretion along the way. These decisions should be directed by a uniform set of published instructions.

Recommendation 2: Constant and consistent training should be a priority for TFU leadership. Significant time and resources should be allocated to training. Although it is sometimes difficult to budget time and money for such things in the face of an enormous caseload, prioritizing training will yield large benefits for tax foreclosure case efficiency and TFU morale.

C1-4: TFU Management

Assessment 1: For employee evaluations and discipline, the TFU supervising attorney sees that a CCPO-mandated annual review is conducted for each TFU employee. A progressive discipline system is in place. The head of staff handles most staff issues initially. If the head of staff cannot deal with staff issue informally, then the issue is addressed by the supervising attorney. The head of staff monitors work of support staff by means of CMS and informally prods support staff when work piles up. The supervising attorney prods staff attorneys when cases begin to back up.

TFU is difficult to manage because the CMS, by its design, shifts responsibility for outcomes away from attorneys – and towards numerous support staff. It therefore becomes difficult to develop the metrics necessary to gauge the productivity of individual attorneys and support staff members.

The attorneys appear largely happy or satisfied in their work. However, the attorneys' assessment of support staff morale is not consistent (support staff were interviewed and assessed in Section A). All attorneys state that everyone gets along personally – but opinions differ as to the morale of support staff.

Some say that morale is good – while others say that morale is bad because of uneven work loads, low pay, turnover and constant equipment and CMS problems that never seem to get resolved.

Recommendation 1: TFU should consider adopting the attorney-driven organizational structure described earlier in this section. Without responsibility for individual tax foreclosure cases resting entirely with individual attorneys and their dedicated support staff members, it is impossible to manage TFU towards better outcomes.

C1-5: TFU File-Management Analysis

Assessment 1: TFU has transitioned to a paperless case-management system. Because CMS is a module of the Justice Matters software in use throughout CCPO, there are no paper files – all records are either electronic or scanned copies of paper records.

The Treasurer does not send TFU the master list of tax delinquent parcels. Instead, the Treasurer selects a smaller number of delinquent parcels for prosecution.

Recommendation 1: No recommendation. The file-management system is automated through CMS and presents no difficulties. A detailed description of the management of cases follows in the next section.

C1-6: TFU Case-Management Analysis

Assessment 1: In essence, CMS is an assembly-line approach to tax foreclosure: different TFU employees have responsibility for different stages of tax foreclosure cases. Responsibility varies, as follows:

- One (1) team performs initial research;
- One (1) support staff member handles all title company relationships;
- Another support staff member coordinates obtaining documents from municipalities;
- One (1) attorney and one (1) support staff member are assigned to each parcel at this point;
- Tax foreclosure case assignments are randomly generated by CMS;
- CMS assigns an attorney and a support staff member to each case;
- Each attorney has multiple, parcel-specific pairings with each support staff member;
- The attorney usually only sees the case after the initial research is complete and the title work and affidavit are returned;
- The attorney then performs a limited function;
- Then the case is returned to support staff to perfect service and prepare additional pleadings;
- The attorney is usually not involved in the tax foreclosure case again until the tax hearing;
- After the tax hearing, the attorney has nothing to do with the tax foreclosure case; and
- Other support staff members are responsible for the sheriff's sale and related matters.

This CMS approach has its merits – it allows task specialization among support staff and limits the attorneys' roles to tasks only attorneys can perform. Attorneys exercise minimal oversight.

On the other hand, this approach does not allow the attorneys to take full professional responsibility for individual tax foreclosure cases. Instead, CMS improperly places responsibility for outcomes on the shoulders of support staff.

TFU attorneys report that the average time from filing of complaint to obtaining a foreclosure decree is nine (9) months to one (1) year in judicial cases. CMS data indicates that the average filing-to-decree time for judicial cases is 348 days, or just under 12 months. The statewide average for urbanized counties to complete a judicial foreclosure ranges from six (6) to nine (9) months.

TFU seems trapped by the CMS – with CMS running TFU, rather than TFU running CMS. What can and cannot be changed is determined by what the software will permit. CCPO technology staff work diligently to accommodate TFU requests for changes, but major changes can only be made by the software provider. TFU is not provided an ongoing

budget to make programming alterations to CMS. The world changes, but CMS does not.

Of particular concern is the CMS's Common Names Database. The Common Names Database is intended to make the task of finding defendants' addresses more efficient. But it does not work well and therefore creates as many problems as it solves. The Common Names Database is one example of a persistent problem which just never gets fixed.

Observations regarding other affected parties follow:

- Cuyahoga County Court of Common Pleas (CCCCP) – does not accept electronic filing at this time. As a result, more paper, ink, equipment and staff time must be expended. Having said this, electronic docket would not greatly reduce the need for paper – because copies of all pleadings and motions must still be printed and mailed to defendants. CCCCPC has begun the transition to an electronic docket.
- Clerk of Courts (Clerk) – CMS cannot communicate with the electronic docket maintained by the Clerk. As a result of this non-communication, support staff must constantly check the Clerk's online docket for certain kinds of updates in tax foreclosure cases.
- Board of Revision (BOR) – here, the tax foreclosure process, by all accounts, is going well. TFU attorneys have helped the BOR develop its procedural rules.

Recommendation 1: CMS should be redesigned – an assembly-line process is neither appropriate nor effective for important legal matters conducted by CCPO. Some suggested features for the redesign follow:

- Attorneys and attorney-assigned support staff should be assigned cases as soon as they are entered into CMS;
- Individual attorneys should have complete and continuous responsibility for their assigned cases from beginning to end (see Recommendation 1 of Section C1-2); and
- Attorneys – not support staff – must be accountable and professionally responsible for individual cases.

Recommendation 2: TFU annual budgets should include ample funds to continuously redesign and upgrade the CMS. TFU, in turn, should have a continuous and thoughtful conversation with the CMS vendor regarding upgrading and redesigning the system.

Recommendation 3: CCCCPC should be encouraged to complete its transition to an electronic filing system.

Recommendation 4: The Clerk should be approached to see if a “read only” interface can be established between CMS and the Clerk's online docket software.

Recommendation 5: TFU's equipment and service contracts should be evaluated for upgrades. Support staff time is wasted when equipment does not function. Sufficiently robust equipment and service can effectively accommodate the workload.

Recommendation 6: Repair the Common Names Database. The database should allow staff to more quickly obtain good addresses for non-individual defendants. However, the database does not work well, is a source of endless frustration – and its repair is urgent.

C2. FORECLOSURE COMMUNITY ASSISTANCE PROGRAM

This subsection will assess the Foreclosure Community Assistance Program of TFU, and make recommendations in the following areas:

- Community assistance;
- Targeted demolitions for public safety; and
- Foreclosure-related litigation.

C2-1: Community Assistance

Assessment 1: TFU currently conducts community outreach – sometimes conducted independently. Other times, the outreach is conducted in conjunction with the County Treasurer or Cuyahoga County Land Reutilization Corporation (CCLRC), also known as the County Land Bank – the latter of which TFU has an increasingly close working relationship.

TFU community outreach is conducted primarily by the TFU supervisor, who is generally assisted by one (1) member of the support staff on a part-time basis. TFU attorneys also participate in outreach on an *ad hoc* basis.

Outreach focuses heavily on Cleveland – with its primary goal being to help community leaders identify which nuisance properties are tax-delinquent and therefore eligible for tax foreclosure.

Recommendation 1: TFU's community outreach should be continued and enhanced. Under the attorney-driven CMS model proposed above, a specialized support staff member could focus exclusively on community outreach under the leadership of the TFU supervisor.

The community outreach specialist would have no responsibilities in the tax foreclosure process. This specialist should have the education and experience required to build relationships between community leaders and TFU.

Recommendation 2: The tax foreclosure caseload under the attorney-driven CMS model proposed above should assign cases to attorneys based upon a geographic zone approach. Each attorney should have a geographic zone where his or her tax foreclosure case parcels are located.

Such a zone approach would allow TFU attorneys and their assigned support staff to develop long-term and knowledge-driven relationships with local leaders. If mayors and council people know which TFU attorneys cover their communities, then each attorney could be empowered to conduct meaningful outreach in the course of his or her tax foreclosure duties.

Recommendation 3: CCPO should explore the option of relocating TFU from the Justice Center to another office location nearby. TFU's community outreach would benefit from offices located apart from the CCPO's mainly law enforcement operation. TFU should have an office environment which encourages collaboration and community involvement.

C2-2: Targeted Demolitions for Public Safety

Assessment 1: Earlier this year, CCPO pledged \$5.0 million in accrued DTAC funds for targeted demolitions. These funds were pledged as match funds under Attorney General DeWine's "Moving Ohio Forward" demolition program. All demolition funds pledged by CCPO and matched by the Attorney General will be administered by CCLRC.

Recommendation 1: New CCPO leadership should continue to assert a supervisory and participatory role in the expenditure of CCPO-pledged demolition funds. CCPO demolition funding represents an opportunity to foster a long-term, collaborative relationship between TFU and CCLRC.

Recommendation 2: In the longer term, DTAC funds in excess of TFU's annual budget should be used for two purposes:

- First, such funds should be used to further enhance TFU's community outreach by employing and equipping specialized community relations staff; and,
- Second, excess DTAC should be used to fund demolitions that enhance public safety. Properties identified by local safety forces as especially dangerous could be demolished using excess DTAC monies.

C2-3: Foreclosure-Related Litigation

Assessment 1: CCPO's Mortgage Fraud Unit (MFU) has been funded by DTAC – but, as a stand-alone entity, is being wound down.

TFU currently has a litigation strategy to address bank walkaways. Bank walkaways occur when banks initiate foreclosure cases but then abandon the cases without taking title to the properties. A tax foreclosure case on a bank walkaway parcel cannot be initiated until the bank foreclosure case is closed.

These properties are therefore caught in limbo: the Treasurer cannot foreclose because of the mortgage foreclosure case, and the mortgage lender refuses to complete the foreclosure. Meanwhile, the property itself becomes vacant, abandoned and a nuisance to the neighborhood for years. Bank walkaways are often dangerous to the community.

When initial research indicates that a parcel selected by the Treasurer is subject to a bank walkaway, TFU intervenes in the existing mortgage case in order to dismiss it. After the mortgage case is dismissed at TFU's request, TFU initiates a tax foreclosure case on the same property. A large backlog of such bank walkaway cases is building in TFU.

Recommendation 1: As MFU is wound down, freed DTAC funds should be used to enhance TFU's community outreach and targeted demolition efforts.

Recommendation 2: Under the attorney-driven CMS model proposed above, bank walkaway cases could be assigned to one or more individual attorneys and handled as a special project within TFU. CMS should be adjusted to accommodate this type of case. Designated attorneys and their assigned support staff could then develop the expertise to clear the backlog of bank walkaway cases.

C3. DTAC ANALYSIS

This subsection will assess the Delinquent Taxes and Collections (DTAC) program of TFU, and make recommendations in the following areas:

- DTAC budgeting.

C3-1: DTAC Budgeting

Assessment 1: Based upon interview information, annual DTAC funds total approximately \$3.6 million. MFU has consumed approximately \$500,000 annually, while TFU has consumed most of the remainder. With enhanced tax foreclosure activity levels in recent years, DTAC is no longer generating large surpluses above TFU expenditures.

Recommendation 1: Over the next year, DTAC surpluses should be used to enhance TFU operations and transform CMS into an attorney-driven system. Computer and copier equipment and service should be upgraded; and, staff- and community-friendly office space should be obtained and furnished.